IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 22/93

COR: THE HON. MR. JUSTICE RATTRAY, PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

R. v. KENNETH BINGHAM
VINCENT MCLAUGHLIN

G Cruickshank & George Soutar for Appellants

Dr. D. Harrisson for Crown

23rd September & 29th November 1993

GORDON J.A.

The appellants were convicted in the Resident Magistrate's Court for the parish of St. Ann for a breach of the Corruption Prevention Act. The indictment charged that they on the 3rd August 1989, in the parish of St. Ann being members of the Jamaica Constabulary Force did corruptly receive for themselves the sum of U.S.$1000 as a fee or reward for forbearing to prosecute Conway Buchanan for Breaches of the Dangerous Drugs Act. They were each fined $1000 or twelve months imprisonment at hard labour. Their appeals to this Court were dismissed on 23rd September 1993, and we now record our reasons as promised.

These are the facts on which the prosecution was based.

On 23rd August 1989, Conway Buchanan was driving a Lada motor car in Ocho Rios going towards St. Ann's Bay. In the vicinity of Columbus Heights he stopped and was approached by the appellant Bingham an Acting Corporal, and the appellant McLaughlin, a Constable in the Jamaica Constabulary Force. Bingham spoke in the presence of McLaughlin. The motor car was unlicenced and uninsured.

Bingham said he wanted to search the car. One Lennox Dickenson who had joined them on foot urged Buchanan to speak freely to the officers. Buchanan then intimated he had ganja in the car and sought to strike a deal with the officers. On Bingham's suggestion they left that area which was crowded, and proceeded under escort of the appellants to a quieter place near the pier in Ocho Rios. There Buchanan offered Bingham in McLaughlin's presence $10,000 for them to forbear prosecution. Bingham said that amount was "cnicken feed." He agreed to accept $1000 U.S. then and $10,000 Ja. at a later date and Dickenson left to get the money while the appellant escorted Buchanan to a club named the Ruins.

Dickenson went to Neville Williams and borrowed the U.S.$1000 and on his return sought and found the appellants at the club where they were enjoying lunch. In the presence of McLaughlin the money was tendered to Bingham who said it should be given to McLaughlin to be checked. McLaughlin took the money, left and returned saying that it was good money. He handed it to Bingham. Bingham instructed Buchanan to drive to the police station. On the way Buchanan stopped and refused to go further with so much ganja in the car. Bingham then removed from the large bag three small bags of ganja and placed them in a small bag. He took the complainant Buchanan to the police station in Ocho Rios and charged him for possession of ganja, dealing in ganja, trafficking in ganja, preparing ganja for export in respect of the amount in the small bag.

Neville Williams had followed Dickenson and observed the transactions, he took possession of the big bag which contained the bulk of the ganja and he subsequently reported the incident to senior officers at the Ocho Rios Police Station. Investigations led to the preferment of this charge on the advice of the Director of Public Prosecutions.

The appellant Bingham in sworn testimony denied the allegations made against him. The appellant McLaughlin in an unsworn statement said "I was no part of any transaction."

Mr. Soutar by leave of the Court submitted that the learned Resident Magistrate erred when he refused to accede to a submission that there was no case for the appellant McLaughlin to answer. There was no evidence that he requested any money or that he was party to any transaction between Bingham and Buchanan.

There was evidence that when Bingham indicated an intention to prefer charges for a smaller amount of ganja McLaughlin rode away but by then the offence had been completed. He had collected and checked the U.S.$1000 and declared that the notes were genuine, thus satisfying the demand. Indeed it might of him be said: he was "in blood stepp'd in so far that, should (he) wade no more returning were as tedious as go o'er."

Mr. Cruickshank adopted Mr. Soutar's submission and added:

> "(2) that the learned Resident Magistrate failed to advise himself as to the dangers of acting on the uncorroborated evidence of both witnesses for the Crown as it was manifestly clear that they were in law accomplices."

Mr. Cruickshank submitted that the three main prosecution witnesses were accomplices and as such there was the need for their evidence to be corroborated; that the Resident Magistrate in arriving at his decision should indicate in his findings his awareness of this need. He further submitted that as there was no corroboration the Resident Magistrate should have indicated in his findings that the appropriate principles had been applied by him in arriving at his decision. The absence of these findings was fatal to the Crown's case and the appeal should be allowed

and the convictions quashed. He relied on R. v. Leroy Sawyers R.M.C.A. 74/80 (unreported) delivered 30th July, 1980; Malek & Reyes vs. R. [1966] 10 W.I.R. 97 and R. v. Craigie & Harvey R.M.C.A. 9/53 (unreported) delivered 29th July, 1993 and the cases referred to therein.

Dr. Harrison submitted that whereas Buchanan may be regarded as an accomplice, neither Dickenson nor Williams falls in that category. Even if it may be said that Dickenson may have had an interest to serve Williams was untainted and there was credible evidence from these latter witnesses corroborating the testimony of Buchanan. She further submitted that the failure of the Resident Magistrate to record in his findings that he had in mind the requirement that the accomplice evidence should be given special treatment was not fatal to the conviction.

It must be recognized that by its very nature, the charge requires in proof thereof evidence from the virtual complainant who perforce is a person with an interest to serve; the person who sought to avoid prosecution by making the corrupt payment to the appellants. This complainant is in the position of an accomplice. Mr. Buchanan was found with a large amount of drugs which would have attracted a severe penalty, indubitably imprisonment, and, it may be considered because he paid "chicken feed" instead of being set free he was charged for a lesser amount and, on his evidence, he was fined. Neither Dickenson nor Williams was at risk for prosecution but Dickenson played an active role. Williams facilitated a friend.

We agree with Miss Harrison that Williams afforded ample evidence of corroboration. This being patent, the learned Resident Magistrate's findings "I accept the evidence of the prosecution witnesses" incorporates acceptance of corroboration.

It does not appear in the Notes of Evidence that a no case submission was made by the defence at the end of the prosecution case nor is there a record of submissions made at the close of the defence. Counsel who appeared before us and in the Court below, assured us that submissions were in fact made and it was then pointed out to the Court that the main prosecution witnesses ought to be regarded as accomplices and being so regarded the lack of corroboration must lead ineluctably to a dismissal of the charge.

We regard it as obligatory for a Resident Magistrate to note submissions made in the conduct of a trial as a part of the record. Section 291 of the Judicature Resident Magistrates Act provides that notes taken in the course of a trial together with the information or indictment "shall constitute the record of the case." The notes are incomplete if submissions made are not faithfully recorded. This section also requires that "the magistrate shall record or cause to be recorded in the notes of evidence, a statement in summary form of his findings of fact on which the verdict of guilty is founded."

This last mentioned requirement has been the subject of judicial directions contained in recent judgments of this Court and it behoves all Resident Magistrates to be ever mindful of them. The most recent decision is that of Resident Magistrate Criminal Appeal 9/93, **R. v. Fitzroy Craigie and Desmond Harvey** (supra). This case reviews the decisions in **R. v. Daniel Dacres** delivered 31st July 1980; **Junior Reid v. The Queen** [1989] 3 W.I.R. 771, S.C.C.A. 77/88 **R. v. George Cameron** dated 30th November, 1989 (unreported) and R.M.C.A. 73/89 **R. v. Vince Stewart** delivered 14th Febraury, 1990. All these cases indicate the approach which a judge must adopt when he is dealing with cases which fall into a special category. The category is determined by the evidential

requirement and corroboration is one such requirement. Wolfe J.A. in Craigie et al (supra) stated the law thus:

> "We wish to re-emphasise that Resident Magistrates hearing cases in which evidence of special category has to be considered must state in their findings of fact that they are aware of the necessity to warn themselves that caution is required in acting upon the evidence and further must demonstrate in such findings that the legal principles have been applied in resolving the factual issues which arise for determination. Failure to conform to these directives from this Court will be fatal to any convictions which are recorded in such circumstances."

Craigie's case is easily distinguishable from this in that the Resident Magistrate there had to assess uncorroborated identification evidence. In this case the learned Resident Magistrate, we find, in his acceptance of the prosecution case, found there was corroboration of the witness whose evidence required corroboration. In addition learned counsel for the appellants in their submissions adverted to the fact that the learned Resident Magistrate had been alerted to the fact that it was desirable for there to be corroboration of the evidence of the witness the defence regarded as accomplices. This Court is anxious to ascertain that the Resident Magistrate was aware of the legal principles to be applied, the need for caution and a demonstration of the application of the principles. We are satisfied that despite his failure to comply fully with the directions of this Court, the Resident Magistrate was aware of the correct principles to be applied and thus alerted, applied them and that there has been no miscarriage of justice.

The appeal against sentence was wisely abandoned by counsel but we are constrained to comment on the lenient sentences imposed. Offences of this nature are on the increase and a fine of $1000 can in no wise be a deterrent.

The officer involved regarded $10,000 Ja. as "chicken feed" and we share the view that a custodial sentence would have been appropriate.

Cases referred to

(1) R v Leroy Sawyers R.M.C.A 74/80 (unreported) 30/7/80.

(2) Malcolm & Reyes v R (1966) 10 W.I.R 97

(3) R v Craigie & Harvey R.M.C.A 9/93 (unreported) delivered 29/7/93

(4) R v Daniel Dacres delivered 30/7/80

(5) Junior Reid v The Queen (1954) 3 W.I.R 771 ~~SCCA 77/88~~

(6) R v George Cameron — 31/11/89 (unreported) SCCA 77/88

(7) R v Vance Stewart R.M.C.A 73/89 — delivered 14/2/90.