

Sufficient evidence on which judge could have
convicted — question of fact: sufficient evidence.
Annexed: dismissed

No Case referred to

JAMAICA

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IN THE COURT OF APPEAL

RESIDENT MAGISTRATES CRIMINAL APPEAL NO: 126/88

BEFORE: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Forte, J.A.

R. v. LEBERT CLARKE

Appellant In Person

Miss Paula Llewellyn for the Crown

January 16, 1989

CAREY, J.A.

In the Westmoreland Resident Magistrates Court before

His Honour Mr. W.L. Morris, held on the 22nd of December, 1987, this appellant

Lebert Clarke was convicted of larceny of an apron containing some two

thousand dollars (\$2,000.00). The allegation being that it was stolen from a
parked motor van near the market in Savanna-La-mar on the 16th November, 1987.

The Crown's case was that Mrs. Mavis Mellis, a higgler left her apron in this
parked vehicle while her husband took goods therefrom. She was absent for some
fifteen minutes and upon her return found that her apron and its contents had

disappeared. An alarm was raised. Another man Fletcher, who was also charged
and convicted, but who is not before us, was pointed out, because he

apparently was nearby. Subsequent to that date, Mrs. Mellis returned to the
police station where she identified and claimed her apron. Evidence of

significance against this appellant came from a witness named Winston Miles,

who said that on that date he was in the market between 10 - 11 o'clock when he
saw the appellant there, and he hailed him. When he did, he observed that the

appellant had a box under his arm. Mr. Miles appears to be a very inquisitive
fellow, because he was curious to know what was inside this box which the

appellant had. The appellant replied that he had nails in the box, and Mr. Miles ever persistent, requested some of those nails, but the appellant, reluctant to hand over the nails, said that there was only a small amount. He opened the box to demonstrate the truth of his statement and in doing so, took out a blue apron and a small amount of nails. That blue apron, Mr. Miles recognized, as being the property of Mrs. Mavis Mellis.

In his defence the appellant denied that he stole the apron. When the appellant was interviewed by the police and cautioned he told the police officer that he was not the only one who stole it, the other was Delvin Fletcher, who was also in the market and that was the only evidence against Fletcher as we understand it. But that of course, did not amount to any evidence against Fletcher. A confession is only evidence against the maker thereof, not against anyone else and we could see really no basis for the conviction of Fletcher. He however, did not choose to appeal, and is not before us today. We are concerned only with this appellant. He gave evidence on oath and he recounted that he was searched, accused of stealing the two thousand dollars (\$2,000.00) in the market, but he denied the charge. He was beaten for his pains, but he never made any admission of his guilt.

The learned trial judge made certain findings of facts, and on those findings he was entitled to convict this appellant of the offence of larceny.

There is a rather peculiar finding which does not concern this appellant in which the learned Resident Magistrate said this:

"Clarke stole the money (which clearly was an inference from the facts open to him)"

and then continued in his findings:

"and passed it to Fletcher who was sitting with others, by the time police arrived, nothing was found."

3.

Nothing in the transcript which we have, provides any material for such a finding. Be that as it may, we have considered the evidence against this accused. He argued this morning, that everybody was telling a lie on him, that is really what it amounted to. The learned Resident Magistrate saw and heard the witnesses, an advantage which we are denied, and there is in our judgment sufficient evidence on which he could properly be convicted. So far as sentence is concerned, we see no reason whatever to interfere as that sentence was justified on the facts. What the court will order therefore, is that the appeal be dismissed and the conviction and sentence affirmed, but the sentence is to run from the date of his conviction.