JAMAICA

IN THE COURT OF APPEAL

CAYMAN ISLAND CRIMINAL APPEAL No. 2/65

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

R. vs LESTER RITCH

Mr. D. ChinSee for the Crown

Mr. K. Brandon for the appellant

15th March, 1966.

HENRIQUES, J.A.,

The appellant in this matter was convicted by the learned judge of the Grand Court of the offence of 'being unlawfully found at night without any lawful excuse upon the enclosed yard of Miss Annie Bodden of George Town, Grand Cayman.' He was sentenced by the learned trial judge to imprisonment for a period of twelve months with hard labour. He has appealed against his conviction and sentence.

A document has been filed which euphemistically has been referred to as grounds of appeal. It is long and abstruse and it has caused the Court a certain amount of difficulty in being able to understand and appreciate what exactly are the grounds of appeal. It offends against the cardinal principle that grounds of appeal should be clear and concise, and it is hoped that the Court will never be put in the position again of having to construe documents of this nature. It appeared at the outset that some of these so-called grounds raised questions of fact, and the attention of learned Counsel for the appellant was drawn to the provisions of Section 224 of the Cayman Islands Administration of Justice Law, Chapter 421. The provisions

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of that Section are as follows:-

" An appeal from any judgment of the Grand Court "shall lie to the Court of Appeal but such appeal "shall be for matter of law only, and not for matters "of fact; and shall be subject to the aforesaid Law 3 "of 1889 of the Cayman Islands, and the Cayman Islands "Appeals Regulation Law of this Island."

Despite the provisions of that Section, Counsel argued although that was the Law previous to 1965, in 1965, the Law was altered by a Law to Amend the Judicature (Appellate Jurisdiction) Law 1962, No. 2 of 1965, which was enacted by the Cayman Islands Legislature in December, 1964, and that as a result of the enactment of that piece of Legislation, appeals were now at large, and this Court could entertain appeals on matters of fact. The Court finds itself unable to share learned Counsel's view, and it is the opinion of the Court, that all that Law 2 of 1965 did was to correct an omission which was made when the new Court of Appeal was set up on Independence, and merely provided that the new Court of Appeal should have jurisdiction in relation to offences on conviction other than a conviction on indictment from the Grand Court in the Cayman Islands. Counsel was therefore not permitted to argue any of the grounds of appeal which raised matters of fact.

There were in fact, some eight alleged grounds of appeal, number one, of which disclosed no ground of appeal at all. This applied equally to number two. Number three and number six raised the question of bias on the part of the learned trial judge. That was a very serious allegation to have made and was unsupported by any evidence whatsoever. With regard to those grounds, we merely wish to say that they ought never to have been made. So far as grounds four, five

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and eight are concerned, it may be said, applying a most liberal construction, that they amount to the one complaint that the verdict was unreasonable having regard to the weight of the evidence and was insupportable.

With the assistance of learned Counsel for the appellant we have examined carefully the evidence which was tendered at the trial. Learned Counsel has pointed out certain discrepancies in the evidence of the two witnesses for the prosecution. We agree that there appeared to be some discrepancies, but at the same time we consider them to be minor discrepancies which did not affect the main issue in the case, as to whether there was sufficient opportunity for the complainant and her witness to recognise the man who was in the yard as being the appellant, Ritch.

As a result of that exercise, we are unable to say that this verdict was so much against the weight of the evidence as to be unreasonable or insupportable. In the circumstances, therefore, the appeal against conviction will be dismissed.

Learned Counsel has also appealed against sentence which he urges is manifestly excessive, and he has asked the Court to reduce the sentence. It is true, that the appellant bears a most unsavoury character, although many of his twenty-odd offences have been of a minor nature, and the Grand Court may very well have taken - did in fact, take, a serious view of the nature of the offence.

The appellant, according to the facts of the case, entered the yard of an elderly lady who was living alone with a young companion in the dead of night, a place at which he had no business at that time of the night and possibly entered it for unlawful purpose. Nevertheless, we feel that a sentence of 12 months hard labour may be said to be

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excessive for the particular offence, the appellant having been punished in the past for the various offences of which he had been convicted.

The Court, therefore, is disposed to quash the sentence of twelve months hard labour that was passed on the appellant and to substitute therefor a sentence of six months hard labour.So far as sentence is concerned, the appeal is therefore allowed, the sentence quashed and a sentence of six months hard labour substituted therefor. Sentence will run from today.