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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL Nos. 175/65 & 180/65

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

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R. vs MAVIS KEATING
&
VICTOR BROWN

Mr. M. Wright for the Crown

Mr. D. McFarlane for the appellant Keating

30th March, 1966

LEWIS, J.A.,

These are two applications by Victor Brown and Mavis Keating for leave to appeal against their convictions in the Kingston Circuit Court on the 26th of October, 1965.

The applicant Brown was convicted of warehouse breaking and larceny. The applicant Keating was convicted of receiving. They had been jointly charged along with three other persons, one of whom was Raymond Henry, for warehouse breaking and larceny, in the parish of Kingston between the first of May and the fifth of May, 1965, and on additional counts, Brown had been charged with receiving certain articles which were recovered in respect of that warehouse breaking. Keating had been charged with receiving certain other articles, and Raymond Henry had also been charged with receiving certain other articles. A large number of goods including various electrical goods had been stolen from the warehouse.

The evidence with regard to Victor Brown was that, on the 7th of May, Detective Dudley Dobson found him at the corner of Chancery Lane and North Street carrying a brown

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bag in his hand. He stopped him and asked him what he had in the bag. Brown replied 'nothing', and he asked him to open the bag, whereupon Brown dropped the bag and ran off. He was chased, held, brought back and the bag was found to contain a certain number of articles which had been missing from the warehouse. Brown then said that a boy had given them to him to sell. He took the police to 127 Orange Street where they met one Raphael Ritchie, who said that he Ritchie, lived there along with Paul and Alfred Walcott who was also a defendant in this case and with respect to whom I will say something later. Other stolen articles were found in that room.

In Court, Brown said that Ritchie had asked him whether he knew anyone who would buy an amplifier and three speakers, and that as he knew somebody he had accompanied Ritchie to Raymond Henry's shop and there he had remained at the gate while Ritchie had gone in and sold these articles. I don't think it is necessary to say more abour Brown's case because the Court having examined the summing-up with care has come to the conclusion that there is no reason to interfere with the conviction.

With respect to Mavis Keating's application, Detective Campbell gave evidence that on the eight of May, he went along to No. 100 Church Street where he met Keating. He told her that he was making enquiries into office breaking and larceny; that he had got information that she was in possession of certain stolen articles. Whereupon, according to his evidence, she replied, "me, sir, me no buy no stolen goods, you can search the place if you don't believe me." He took her off to the Police Station where they met Alfred Walcott, and as they got into the Station, Walcott said, "Yes, sir, this is the lady me sell the changer, some clocks,

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headlamp and generator." The applicant, Keating, again denied that he had sold her anything. He insisted that he had gone to her in the market; that she had taken him in a taxi to her bar - and there was evidence that she keeps a restaurant - and had paid him £10.14/- for the goods and bought him two beers. Keating denied this and invited the Detective Campbell if he did not believe her to search her premises.

Now, there was evidence from One Elizabeth Morris that on the 6th of May one Jestina Morris had brought her a paper bag containing an amplifier and various other articles which were identified as part of the goods stolen from the warehouse; and Jestina Morris said that Jacob Morris had handed her the bag to take to Elizabeth. Jacob Morris gave evidence that the applicant had given him these things to take to Elizabeth, and that he had handed them to his sister Jestina to take. So it appeared from the evidence, if that evidence was believed, that when the applicant was inviting the police to search her house, she knew full well that she had sent these articles to the house of Elizabeth Morris and that they would not be found in her house.

Well, the applicant did not give evidence but she made a statement from the dock in which she admitted having purchased these goods, but said that she had bought them in the beef market where she has a stall. She said that she had paid £10.14/-, but that she owed a balance on them, but did not tell the Court what the balance was. The goods had been valued by the owner, Gibson at £33.

On this evidence the jury convicted the applicant.

Learned Counsel for the applicant has argued two grounds. First of all, that the verdict is unreasonable having regard to the evidence. In support of that he asked this Court to look at the state of the evidence against another of the accused persons who was acquitted by the

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jury, namely, Raymond Henry, in so far as it appears from the summing-up, and he submits that the cases were similar, and that if Henry was acquitted, then the applicant should also have been acquitted.

There were, however, several differences of importance between those cases. First of all, Henry had at all times admitted that he had purchased the goods which were found in his possession. He had stated the price for which he had purchased them, and the price as given by Henry was about the same as that which the owner in his evidence placed upon them. The applicant, on the other hand, originally denied having the goods and indeed had attempted to mislead the police. Then the applicant, as I have said, did not go into the witness box, and although she did say in her statement that she had denied originally because she was frightened, yet, it may very well be, that the jury were impressed by the manner in which Henry gave his evidence. It is always invidious, unless there is almost an absolute similarity in the circumstances, to compare what the jury does in the case of one accused with what they do in a case of another. Certainly, in this case the Court thinks that the applicant's case differed substantially from that of Henry, and that the verdict of the jury cannot be said to be unreasonable. There was ample evidence to support it.

The other ground argued by learned Counsel for Keating was that the learned Judge misdirected the jury as to the facts. The difference between Campbell's evidence and the statement of the applicant from the dock was, that Campbell said that Walcott told him that this woman had paid him £10.14/-, and no mention, apparently, was made of any balance. The applicant said that she pay him £10.14/- but that there was a balance. With respect to that the learned

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trial Judge made this comment which is complained of by learned Counsel. He said, " So there you are members of the jury, he (that is Gibson, the owner Gibson) is putting a value of £33 on them. You have got to consider is that a reasonable value? Is that a proper value? She is telling you here she paid £10.14/- down with a balance to be paid later. She doesn't tell you what the amount of the balance is. She tells you so you have got to ask yourselves, how much was she really paying for the goods. She doesn't say how much balance there was. Was it £10.14/- she was paying or not? If it was £10.14/-, which is approximately a third of the value of the goods, was she paying a reasonable price or was she buying them very much under their value."

Learned Counsel submits that the learned trial judge did not put the contrary possibility that there may have been a balance. But what the learned trial judge did say was, "was it £10.14/- she was paying or not," leaving the jury to decide which of the two they accepted. The Court thinks that there was no misdirection here, and that the evidence was fairly put to the jury and left to them. This ground of appeal also fails.

There was a third ground involving an alleged misdirection as to the burden of proof, but this ground after some discussion at the Bar has been abandoned, and it is not necessary to say anything further about it.

For these reasons, the applications for leave to appeal of both the applicants are refused.