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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 129/64

BEFORE: The Hon. Mr. Justice Duffus (President)
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Shelley (Acting)

R. vs R O N A L D C A M P B E L L

Mr. F. M. Phipps for the Crown

Mr. L. G. Williams for the appellant

18th January, 1966

DUFFUS, P.:

The appellant, Ronald Campbell was charged on an indictment containing four counts, the first count charged larceny of a motor vehicle, the second count charged robbery with aggravation, the third count and the fourth count were also for robbery with aggravation.

The indictment charged Campbell along with two other persons Leonard Lee and Alonza Taylor. The circumstances, as gathered from the Crown's case were, that a motor car was stolen on either the 17th or the 18th of May, 1964, and the allegation was that this motor car was used by Lee, Campbell and Taylor for the purpose of committing the offences charged in the second, third and fourth counts of the indictment. The evidence of Betina Liston whom the second count concerns, is that she was given a lift in this motor car, and while she was a passenger in the car she was robbed by Lee, Campbell and Taylor of various articles and money - £4.10/-. The complainant, Liston got out of the motor car at the time of this incident and immediately after she had been robbed the motor car was driven off at speed and the men then proceeded on their way in one of the country districts of Clarendon and the two women concerned in the third and fourth counts, namely, Japalee Beckford and Ida Copeland, were likewise given a lift in the motor car,

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and after it had proceeded a short distance these two women were likewise robbed of various articles and money which each of them had. The car was driven off after these two women had been left on the wayside, and later the car was abandoned on the road where it was subsequently recovered by the police some hours later. In it were found a number of the articles belonging to the three complainants in these charges for robbery with aggravation. Some three weeks later, the three persons charged, Lee, Campbell and Taylor were apprehended in the town of May Pen. They were actually taken into custody on Tuesday the 9th of June, the offences charged in the indictment, having occurred:- (a) in respect of the stealing of the motor car on the night of the 17th of May and (b) the robberies in the early morning of the 18th of May.

The three prisoners were transferred ~~from~~ to the Police Station at Mandeville, where a series of identification parades were held, and arising out of the identification of Lee, Campbell and Taylor by the three women Liston, Beckford and Copeland, they were arrested and formally charged with the offences in the indictment. I may mention that the three women did not all identify each of the three-named persons charged, but of that more anon.

At the trial at the Circuit Court Betina Liston and Ida Copeland only of the three complainants gave evidence. The third complainant, Japalee Beckford was not in the Island, and apparently this fact was only discovered by learned Counsel for the Crown on the very day the trial commenced, therefore, he was not in a position to take the necessary steps to prove that she had left the Island, and to prove that she had deponed at the preliminary examination before the Resident Magistrate for the parish. At the close, therefore, of the Crown's case learned Counsel for the Crown readily agreed with the learned trial Judge that there was no prima facie case made out against

Alonza Taylor who had been identified by the complainant Japalee Beckford only. Accordingly, the learned trial Judge invited the jury to find a formal verdict of 'not guilty' against Taylor at that stage and he was discharged from the trial.

Taylor was subsequently called as a witness for the defence by the accused Leonard Lee, and in the course of his cross-examination by learned Counsel for the Crown his criminal record was put to him and he admitted that he had a number of previous convictions. It was also suggested to this witness, Taylor in the course of his cross-examination by Counsel for the Crown that he was the ring-leader of the three persons charged in the attacks on the three women, Liston, Beckford and Copeland. Learned Counsel for the Crown was no doubt endeavouring to destroy the credit of this witness, which if accepted tended to show that the conduct of the Identification Parades was unsatisfactory.

The jury at the close of the case for the defence convicted Lee on the first count on the charge of driving away a motor vehicle without the owner's consent, and also convicted him on the three counts for robbery with aggravation. The jury likewise convicted Campbell on the three counts on which he was charged for robbery with aggravation. Leave to appeal was granted by a single Judge to Campbell and the application for leave to appeal was refused by this Judge in respect of the application to appeal by Lee.

On the hearing of this appeal a number of grounds were argued on behalf of the appellant, Campbell. The Court listened carefully to the arguments submitted by learned Counsel for the appellant, Campbell on all of these grounds, but without intending any disrespect to the zeal and energy put into the arguments by learned Counsel, the Court did not consider that there was any merit in five of the six grounds. The Court however, considered that there was considerable merit in what was

numbered in Counsel's Supplementary grounds as the fifth ground which reads as follows:-

"That the disclosure by Ezrick Grant that he saw the three accused men in the bush trying to burst open a chest was inadmissable, irrelevant and most prejudicial and should not have been permitted."

Learned Counsel for the Crown was invited to reply on this ground only. The circumstances in which this matter arose are as follows. A Constable named, Ezrick Grant was called on behalf of the Crown. He was a Detective Constable stationed at May Pen and his evidence in chief was extremely brief. In answer to learned Crown Counsel for the Crown he said that he went somewhere on Tuesday the 9th of June, 1964, He was then asked 'where did you go?'

His answer was 'in Paisley Avenue in some bush.'

The next question was 'you alone' the answer, 'no, sir, along with other policemen'.

Q. And in the bush what did you see? A. I saw the three accused and another man and then followed this question by Crown Counsel -

Q. Doing what? A. They were trying to burst open a chest.

Q. You held them? A. Yes, sir.

Q. And handed them over to the Mandeville police? A. Yes, sir, - and that was the end of the examination of this witness.

It would seem that this constable was called to give evidence as to the apprehension of the three accused together at May Pen which was in the same parish of Clarendon where the offences had occurred, but it is to be noted that this constable Ezrick Grant was not the arresting constable and he did not charge them for the offences contained in the counts at the present trial. Following on this evidence-in-chief by Constable Ezrick Grant the three accused who were not represented at the trial by Counsel, each proceeded to very lengthy cross-examination of the constable. Most of this cross-examination was centred around the finding of this chest.

It was readily conceded by learned Counsel for the Crown before us that this evidence led by the Crown as to the three accused parties having been found trying to burst open a chest in the bushes was quite irrelevant to the charges on which they were being tried, but it was submitted by learned Counsel that although irrelevant it could not have been prejudicial, and as a consequence, he said, there was no miscarriage of justice. He further stated that this evidence could only be prejudicial if the statement tended to reveal that the appellants may have been implicated in some other crime and that there was nothing to suggest that they were committing or had committed another offence. Learned Counsel asked us to see how the matter was dealt with by the learned trial judge in his summing-up which appears on page 10 of the record and this is what the judge said -

> "Now, in the course of this man's evidence he said that he saw them in the bushes trying to break a chest. I must tell you that that has nothing to do with this case. You won't be entitled to attach anything sinister or anything of significance to the fact that they were trying to break open a chest; they are not charged with breaking open a chest. In fact, the appropriate attitude which you must adopt in considering the evidence is that this breaking and opening of a chest was a properly legitimate matter about which they were concerned, if you think they were concerned. As I say, it should be allowed no significance whatsoever when you are considering the evidence."

From those directions it seems to us to be quite clear that the learned trial Judge was well aware of the mischief which may have been caused by the unfortunate statement by Constable Ezrick Grant.

The principles of law which are applicable in matters of this kind are clearly set out in paragraph 1015 of Archbold's

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Criminal Pleading Evidence & Practice 35th Edition:-

> "The general rule in criminal cases is, that nothing may be given in evidence which does not directly tend to the proof or disproof of the matter in issue."

There follows in Archbold a reference to the well-known authority Makin v. Att. Gen. for N.S.W.(1894) A.C. 57. The judgment of the Judicial Committee of the Privy Council in that case was delivered by the Lord Chancellor, and this is what he said at page 65:

> "It is undoubtedly not competent for the prosecution to adduce evidence tending to shew that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to shew the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused."

There are, of course, certain well-known exceptions to the general rule, when the Crown is permitted to lead evidence in respect to offences other than those charged in the indictment, but in the instant case learned Counsel for the Crown has not sought to argue that the evidence here came within any of those exceptions. It was, in the course of argument, suggested that perhaps the evidence may have been tendered in order to show association between the three persons charged, but Counsel for the Crown said that he was not in the circumstances prepared to pursue that argument and could not support it because the finding of these three men in the bush, breaking open the chest took place some three weeks after the crimes charged in the indictment, and furthermore, the crimes

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charged in the indictment, he pointed out, would have been entirely different to anything concerned with the breaking open of a chest.

The sole question, therefore, for this Court is, whether a reasonable jury was likely to infer from this evidence that the three accused men were engaged in some transaction which might show that they were guilty of criminal acts other than those charged in the indictment. We have given the matter serious consideration and we are unable to agree with the submissions of Counsel for the Crown that the statement could only have been treated by the jury as being perfectly innocuous. It seems to us that no reasonable jury could have drawn any other inference in the circumstances of this case, but that these three men were doing something wrong in connection with some other crime or offence. It must not be forgotten that when Taylor, who had been charged with Campbell and Lee, was being cross-examined by Counsel for the Crown, that his previous criminal convictions were put to him, and it is note-worthy that in the course of his directions to the jury that the learned trial Judge spoke thus of Taylor:

> "Certainly he emerged from that (that is, his cross-examination) as a person of unsavoury character."

It must also be borne in mind that learned Counsel for the Crown, perhaps carried away with excessive zeal for the Crown's case had suggested to Taylor that he was the ring-leader of the three men in the various offences charged in the indictment, and this suggestion was made to Taylor after he had been acquitted by the jury of those very charges.

With all this before the jury, it seems to us that they could have come to no other conclusion, but that the evidence of Constable Grant indicated that these three men were persons, to say the least of it, who were engaged in a series of criminal offences, the latest of which being one that had occurred on or about the very time that they were apprehended in the bush at May Pen on the 9th of June, breaking open this chest. In these

circumstances we are satisfied that there was a miscarriage of justice. The appeal, therefore, in respect of the conviction will be allowed. The Court quashes the conviction and sets aside the sentences of imprisonment and whipping passed on the appellant, Campbell, but as the Court feels that the interests of justice so require, it orders a new trial to take place at the current sitting of the Circuit Court for the parish of Clarendon. The appellant will be kept in custody.

The Court then proceeded to deal with the application of Leonard Lee, making a similar order.