

NO report 681

J A M A I C A

IN THE COURT OF APPEAL

CIRCUIT COURT APPEAL NO. 134/65

BEFORE : The Hon. Mr. Justice Duffus, President
 The Hon. Mr. Justice Waddington
 The Hon. Mr. Justice Moody (Ag.)

R. v. S T E W A R T B R O W N

Mr. H.R. Hamilton appeared for the applicant.

Mr. A.G. Gilman appeared for the Crown.

8th November, 1965.

DUFFUS, P.,

The position is that leave to appeal was granted by my brother, Waddington, in respect of count two, who saw the obvious defects in the Crown's case which have been clearly brought to our attention by Mr. Hamilton, and it seems quite clear that for at least two reasons the conviction ought not to remain - one being that there was clearly no evidence of common design in respect of the missing tools, and the second is, that from the summing-up, there is quite a gap as to what happened to the tools during the period from 4 o'clock in the morning when the police found the car to 4 o'clock in the afternoon when the tools were found to be missing; and the fact that the car had been removed a distance of some 20 miles and there is apparently absolutely nothing to indicate what may or may not have happened to these small hand tools.

In the circumstances, the conviction by the jury on count two is clearly unreasonable. The Court accordingly allows the appeal, quashes the conviction and sets aside the sentence of twelve months imprisonment in respect of that count. In respect of the application for leave to appeal in respect of counts one and three, learned Counsel for the applicant has

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informed this Court that he does not propose to pursue the application. In the circumstances, therefore, the application for leave to appeal in respect of those two counts is refused.