

835

J A M A I C A

IN THE COURT OF APPEAL

R. M. COURT CRIMINAL APPEAL No. 43/65

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

---

R. vs       T R E V O R   B R O W N

Mr. K. Simmonds for the Crown

Appellant appeared in person

2nd March, 1966.

---

HENRIQUES, J.A.,

This appellant was convicted by the learned Resident Magistrate for Kingston, of the offence of unlawful possession of a watch, and was sentenced to six months hard labour.

He has appealed, and today before us he has urged that he was denied the opportunity of calling a witness in his defence. It appears that after the police constable had given evidence the appellant gave evidence as to his possession of the two articles in respect of which he had been charged, and his evidence in regard to the Bulova watch which was in fact the subject matter of his conviction, was that he had received it from his brother in England. He was cross-examined as to the method in which the watch had come into his possession, and he stated, "the watch came to me by bearer. His name is Bernard. I don't remember his other name. He lives somewhere on Elletson Road. I don't know the number. Bernard was in England. He is back about two years now."

The appellant has urged before us that he asked

/ that he be....

2.

that he be given an opportunity to locate Bernard and have him as his witness, and that he was refused that opportunity.

It appears, however, from the evidence that was given, it is not surprising that efforts were not ordered to be made in regard to the location of this witness, in view of the very vague information which the appellant possessed as to the whereabouts of the witness and upon which he was asking the learned Resident Magistrate to act. However, at the suggestion of this Court this morning the appellant went along with a police party to a portion of Kingston, Elletson Road, Rae Town, and there the person whom he says he referred to in his evidence as Bernard was located and is in attendance and whom he states can give material evidence with regard to the possession of the watch.

We think that in the interests of justice, the witness being now available that he should be afforded the opportunity of calling the witness before the learned Resident Magistrate. In the circumstances, therefore, we are disposed to quash the conviction against the appellant and to order a new trial in respect of the charge of which he was convicted. The conviction is quashed, conviction and sentence set aside and a new trial ordered.