

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 49/89

BEFORE: THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

R. v. VALENTINE WILLIAMS

E. DeLisser for appellant

Miss M. Hughes for Crown

29th June, 1989

CAMPBELL, J.A.

The appellant Valentine Williams appeals against his conviction and sentence for the offence of receiving stolen property. He had been indicted for the offence of Simple Larceny contrary to Section 5 of the Larceny Act. The brief facts as presented by the Crown are that Allan Parker on the 9th of August, 1987, drove his car licenced No. 3638AG, a white Toyota Corolla car, to Hellshire Beach and duly parked it in the parking area. Within one hour of so parking the car, on his return, he discovered that it was no where to be found. He made a report to the Police and the Police instituted their procedures for the recovery of stolen motor vehicles.

Mr. Parker's further evidence is that on the 8th of February of the following year, he was called to the Spanish Town Road Police Post where he was shown a 1982 white

Toyota Corolla. He was able to identify the car as the car which was stolen from him on the 9th of August, 1987. Though there was considerable cross-examination designed to show that his identification of the car was suspect, nothing really turned on that in the appeal before us because the learned Resident Magistrate found, and correctly so, that the car was properly identified by Allan Parker.

The case against the appellant really rests on the evidence of Detective Corporal Trevor Bailey who said that he received a report in August 1987 of the stolen car and he commenced investigation. He received certain information as a result of which he started a search for a white Toyota Corolla motor car bearing registration plate 6175AL. On the 5th of January, 1988 this car was seen in the vicinity of No. 2E Torrington Road. The bonnet of the car was up and he saw two men bending over the engine compartment. He did not then stop to pursue his investigation because it was a one way street and his stopping would block the flow of traffic. He detoured and returned to the area but did not see the car. From there he went in search of the car with the assistance of the police from whom he sought help in monitoring the movement of this car. It was subsequently spotted travelling in a westerly direction along Lyndhurst Road in the vicinity of Calvary Cemetery.

He gave chase and signalled the car to stop. The driver who turned out to be the appellant did not respond to the signals, rather he accelerated. Ultimately this police officer had to bank the car, so to speak.

He identified himself as a police officer and made enquiry as to ownership of the car. The appellant informed him that the owner was one Leon Dixon. The appellant was further asked how he came into possession of the car and he said that it was given to him about two weeks before for him to do some welding work.

One Basil Burnett who is a reputed car thief was a passenger in the car. Bailey enquired of Burnett what he was doing in the car, to which he responded that he had gone to check his friend the appellant and the latter had asked him to drive with him into town. The appellant was asked what type of work he did on the car, his response was that he did welding to the engine. When asked if he had already completed his welding job, he said "yes."

The police officer inspected the car in the area where the appellant said he had completed the welding work. His inspection revealed that no welding had been done. He asked the appellant to point out the area in which the welding had been done. The appellant did not do so, nor did he say anything.

The appellant and Burnett were taken into custody but on the 19th of January, 1988 the appellant was released in Habeas Corpus proceedings. It appears that Burnett, either on the same day or sometime after, was also released. On the 8th of February, 1988 as already stated, Allan Parker identified the car. Following on this, warrants for the arrest of the appellant and Burnett were taken out. The appellant was subsequently arrested by Bailey on the 22nd April, 1988.

The charge was read out to him namely for Larceny of the white Toyota Corolla motor car registered 3638AG the property of Allan Parker. In response to this the appellant said:

"Boss mek me tell you the truth sah me know say the car was not straight is Burnett carry the car come give me but me never want to tell you."

This then is the case for the Crown.

Against this evidence the appellant admits that the car was at his work place in the Torrington Road area. However, instead of confirming the story given to Bailey that it had been given to him some two weeks before he instead said that it had been brought to him that very morning by one Leon Dixon who came to him in the company of Burnett with request for him to do some welding work on it. He finished the welding work but before the owner could return he decided to go on a little errand of his own. He admits that he was apprehended by the police but denies that there was any chase or that the car was banked in order to slow it down and/or to stop it.

He said he volunteered to the police the reason why the car was in his possession namely for welding purpose and he invited the police to inspect the welding work but that the police said they were not interested in that and that he could show that to the court. He denies stealing the car, he denies any knowledge that the car was stolen, he denies any friendship with Burnett, in fact he said that morning was the first that he was seeing Burnett. He denies using the words attributed to him by Bailey when he was arrested

in April, 1988.

On the evidence as a whole the learned Resident Magistrate made specific findings of fact. She concluded that the appellant was found in possession of the car; the car was stolen and that it was stolen property to the knowledge of the appellant.

Having so concluded, the learned Resident Magistrate found that the appellant was guilty of the offence of receiving stolen property and not of larceny for which he was charged.

Before us, Mr. DeLisser in support of ground 1 of the appeal, namely, that the verdict was unreasonable having regard to the evidence, referred to certain parts of the evidence which constituted the background against which the statement to Bailey on arrest is to be considered and invited us to infer that it was very unlikely that the appellant would have told Bailey that the car was stolen and that he was aware of this fact. He also invited us to consider that doubt would have been cast on the evidence because the police, though they could have done so, failed to investigate the existence and whereabouts of Leon Dixon even though documents were tendered in evidence purporting to have been issued to this Leon Dixon.

The documents referred to were a temporary authorization to operate motor vehicle issued on the 1st of September, 1986 purportedly in favour of Leon Dixon and a motor vehicle registration certificate purportedly issued on the 4th of January, 1988. The evidence before the court was

that these documents were not genuine because in the first place the Inland Revenue Department does not use the numbers on the documents nor were documents of those colours used by the aforesaid Revenue Department.

The documents tendered in evidence are patently inconsistent the one with the other and on the face of them are not genuine. For one thing the temporary authorization to operate a motor vehicle was issued on the 1st of September, 1986 and is purportedly still valid even though Allan Parker was the owner of the car with the identical chassis number at least from June 1987.

The submission that the police officer should have carried out investigation on the existence and whereabouts of Leon Dixon is not well founded, because on the face of these documents the police officers would be going on a wild goose chase to try to discover a person who was fictitious and in relation to whom no genuine documents indicating ownership of the vehicle existed. Mr. DeLisser, to his credit, did not pursue much further this ground of appeal, as he candidly indicated that he could carry his submissions no further.

Ground 2, related to the complaint that the appellant had been prejudiced because the evidence which would have at least supported the defence case that welding work had been done on the car consistent with appellant's evidence that he had received the car to do welding work, was not allowed to be elicited. The facts relating to this issue are that the appellant gave evidence that he had done welding work. The Crown's case was that they had seen none. The learned Resident Magistrate decided properly to inspect so to form her

own opinion as to whether welding work had been done. The area indicated by the appellant to the learned Resident Magistrate was covered with grime and precluded the observation of any welding work.

Defence Counsel undertook to have that area cleaned so that the learned Resident Magistrate could carry out her inspection. The cleaning was done, the witness was brought to give evidence that he did clean the area of the car or cause it to be cleaned. Thereafter question was sought to be elicited from this witness as to his observation of the area which was cleaned, objection was taken, the learned Resident Magistrate ruled that the question could not be asked, and if asked should not be answered because the sole purpose of the cleaning was for her the Resident Magistrate to carry out her inspection.

Defence also sought to call the complainant who was present when the cleaning was done no doubt to elicit from him that he also saw what could be welding work. That evidence was not admitted. We consider the non-admission of both pieces of evidence correct because it was not necessary for the adjudication by the learned Resident Magistrate, to have evidence which would be opinion evidence of persons who were not welders or experts in the process of welding as to whether or not there was welding work. What she was left with was the evidence of the police officer on the 5th of January, that when he saw the car and notwithstanding the statement of the appellant that welding work had just been completed when it would be fresh and clearly observable he did not see any welding work and the appellant failed to point out any such work

even though he was invited to do so.

The learned Resident Magistrate herself inspected the car and she made a specific finding that there was no welding work that had been done. This ground of appeal accordingly is without merit.

In conclusion we are of the view that there was ample evidence before the learned Resident Magistrate to entitle her to come to the conclusion to which she came. In our view she could equally have found that the appellant instead of being the receiver, was guilty of larceny of the car. The appeal against conviction is therefore dismissed.

The appellant also appeals against sentence on the ground that it is manifestly excessive. The appellant was sentenced to a term of imprisonment of twelve months.

Mr. DeLisser submitted that a non-custodial term would more accord with a sense of justice because the appellant is aged forty. He has lived an unblemished life so far as contact with the law is concerned.

The vehicle had been recovered and does not appear to have suffered any deterioration, untold suffering would be caused to his family consisting of young children if he is incarcerated. He has derived no economic gain from the offence committed and the real culprit namely Basil Burnett is still at large.

We have weighed these submissions. We are not unmindful of the high incidence of car stealing offences. Yet in the particular case before us we feel that the ends of justice could be served by substituting a fine for the term of

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imprisonment imposed.

Accordingly, we will allow the appeal against sentence, set aside the sentence of twelve months imprisonment and substitute therefor a fine of four thousand dollars (\$4,000.00) and in default thereof twelve months imprisonment at hard labour.