

*C.A. CRIMINAL LAW Appeal K.M. - Conspiracy - causing money to be
paid out on forged cheques -
Circumstantial evidence - hiatus in Crown's Case -
Failure of Crown to prove case -
Appeal allowed, conviction quashed, sentence set aside.*

JAMAICA

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IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL # 21/87

COR: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

REGINA vs. ERROL WRIGHT

Mr. Norman Manley for appellant

Mr. John Moodie for Crown

May 1, 1987

CAREY, J.A.:

The appellant was convicted in the St. Andrew Resident Magistrate's Court as far back as 1st April, 1986, in a trial which begun on the 23rd of April, 1985, on 9 counts of an indictment, which contains some 28 counts. Those counts charged, as to the first, conspiracy, and as to the other eight counts, causing money to be paid out on forged cheques.

Although learned counsel for the Crown endeavoured to support the conviction, in the end, he had to concede that the circumstantial evidence which was adduced fell far short of the standard that is required in a criminal trial. The Crown endeavoured to show that a number of cheques were prepared for persons who had retired from the K.S.A.C., and therefore entitled to receive the proceeds of those cheques, but who, in the event, did not receive them, because they had been cashed by another

man who was charged on this indictment and convicted, but who has wisely not endeavoured to appeal. The evidence showed that according to the system in which these cheques were prepared, upon retirement, notification is given to the Pensions Branch of the Ministry of the Public Service, where a file is prepared; that then ^{goes} / to an officer called an Awards Clerk; the appellant was such an officer, who prepares a Statement of Account and a payment voucher. Thereafter, it would go to other officers who would process the file and the end result would be that a cheque would finally be prepared. That cheque would either be paid out by the cashier or a Certifying officer or in some cases, by the Awards officer.

The specific charge against this appellant was that he caused payments to be made on cheques which were forged. It was necessary, therefore, for the Crown to establish to the required standard, the intention to defraud, in that, when he prepared the Statement of Account, he had no basis for doing so. But the only evidence which was led in this case, was that the persons to whom cheques should have been made were persons who had retired from the K.S.A.C., and in respect of whom notifications could have been received by the Pensions branch of the Ministry of the Public Service; and that the cheques were forged and cashed by persons other than the payees. But there was in fact no evidence whatever called to show that there were no such notifications. It was on the basis of notification from the K.S.A.C., that the Statements of Account would have been prepared by this appellant.

That was a fatal hiatus in the prosecution's case. That was the point taken by Mr. Manley and that is the point which Mr. Moodie has had to concede. The fact as Mr. Moodie endeavoured to show that the appellant knew the co-accused; that in the course of events, he might ~~have~~ handed out certain cheques, in respect of which, the payees were K.S. employees, takes the case no further.

In the result, it means that the Crown had not proven the case. The appeal must, accordingly, be allowed, the conviction quashed, and the sentences set aside.

The Crown's case was based on the evidence of the witness who testified that he saw the appellant on the night of the murder. The appellant's defence was that he was not present at the scene of the crime. The trial judge found the Crown's case to be more convincing than the appellant's defence. The appellant appealed the conviction and the sentences. The appeal was allowed, the conviction was quashed, and the sentences were set aside. The Crown's case was based on the evidence of the witness who testified that he saw the appellant on the night of the murder. The appellant's defence was that he was not present at the scene of the crime. The trial judge found the Crown's case to be more convincing than the appellant's defence. The appellant appealed the conviction and the sentences. The appeal was allowed, the conviction was quashed, and the sentences were set aside.