

CA. Criminal Law - R.M. Cont - Three - Larceny - Victim
whether victim unavailable and could not be
substantiated having regard to the evidence.
Appeal dismissed

JAMAICA

No Case referred to

✓ comp

Encl

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 106/88

BEFORE: THE HON. MR. JUSTICE CAREY, P. (AG.)
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

REGINA

VS.

LEROY LORRINGTON

M. Lorne, for the appellant

C. Stamp, for the Crown

5th December, 1988

GORDON, J.A. (AG.):

The appellant was tried and convicted on an indictment in the Resident Magistrates' Court at Sutton Street, Kingston on the 13th May, 1987, for larceny of a fluorescent lamp, the property of the Kingston Public Hospital. He was fined \$500 and in default of payment he was to undergo imprisonment at hard labour for three months. From this conviction the appellant appealed.

The facts from which the conviction arose are that on Friday 4th November 1986 at about 5:30 p.m. Mr. Cecil Stewart the Chief Supervisor in the maintenance department at the Kingston Public Hospital went to the Drummond Street Workshop with Derrick Atkinson the Purchasing Officer. The appellant was employed there. Mr. Stewart received a report from workers there and observed a fluorescent lamp he had seen in place that morning was then

missing. Mr. Stewart and Mr. Atkinson went to a garage on Brentford Road. There they saw the appellant's car parked and the appellant walking towards the garage. Mr. Atkinson accosted the appellant saying:

"It was reported to me a short while ago that you had taken a fluorescent fixture from the workshop."

The appellant denied this and indicated he was embarrassed by the accusation. He took both witnesses into the garage and showed them two fluorescent lamps. He asked Mr. Atkinson "is this the lamp sir?"

Mr. Atkinson was given one of the lamps and said he was not sure but he would take the lamp to the workshop to have it matched. He invited the appellant to travel with him in his car to the workshop to have this done. The three men went to the workshop in Mr. Atkinson's car. The appellant left shortly after this saying "I will soon be back sir." Mr. Stewart proceeded to attempt to match the lamp he had received from the appellant in the space of the missing lamp but without success. The missing lamp had been suspended from the roof with chains and cord and these had been cut leaving a part hanging from the roof.

Messrs Stewart and Atkinson returned with the lamp to the garage on Brentford Road. They parked behind the appellant's car which was where they had left it. They looked in the appellant's car and saw a fluorescent lamp with chains and cord attached, also fluorescent bulbs. They waited about five minutes and saw the appellant alight from a minibus and approach the garage. The appellant said to the witnesses, "You see that the lamp is not yours sah!"

The witness agreed and indicated he had seen one in the appellant's appellant's car which resembled the missing lamp. At Mr. Stewart's request, the appellant opened his car and gave witness the lamp he had seen there. In doing so the appellant said "See deh sah, but the tubes are not yours." This lamp was taken to the workshop and the lamp fitted. The incident was the subject of a departmental report and prosecution followed.

The appellant in his defence said he was a Foreman in the Maintenance Department where he had worked since 1969. He was in charge of

3.

6 electricians. He had responsibility for new appliances and getting boards of survey. On the 14th November 1986 he went to the garage at 46 Brentford Road after 5:p.m. to work on fluorescent lamps for the garage. Mr. Stewart and Mr. Atkinson visited the garage, he was accused of stealing a lamp and Mr. Stewart took possession of one lamp which he later returned. There was no other lamp given to Mr. Stewart and he had no lamp or other lamp fixtures in his car. He denied he gave a lamp from his car to Mr. Stewart. He denied stealing the lamp from the hospital workshop. He averred that Mr. Stewart's attitude towards him that evening was embarrassing to him.

The ground of appeal argued was that the verdict was unreasonable and could not be supported having regard to the evidence. Mr. Horne in his submissions pointed out that at no time was the lamp matched in the presence of the appellant and there was uncertainty as to where the lamp was kept prior to the trial.

The lamp was, on the evidence of the witnesses, locked away at the Kingston Public Hospital until the 4th December 1986 when it was handed over to the investigating officer, Detective Constable Lawton Shaw. Thereafter it was in police custody and presented in court at the trial. The lamp was tendered in evidence as Exhibit 2.

Indeed there was a delay of some three weeks before the police was called in, which was due to the fact that the matter was subject to departmental procedures and Mr. Stewart only reported the case to the police after he received instructions from the Ministry. There was evidence on which the learned trial judge could have found as he did that the appellant gave Mr. Stewart one lamp which did not match and then another which did match. That the appellant was the person who removed the lamp from the workshop and was therefore guilty of the offence charged.

We cannot find any reason to interfere with the findings of the learned Resident Magistrate. The appeal is accordingly dismissed and the conviction and sentence affirmed.