

C.A. Criminal Cases - R.M. St. Lawrence - Verdict - Identification
evidence, verdict, unless a case is not sufficient to be a
conviction - evidence of identification sufficient.

Appeals dismissed. No cases referred to
JAMAICA

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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 42/89

Evidence

Criminal Procedure

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

REGINA

VS.

PAUL WILSON
MILTON BROWN

Mr. N. Manley for appellant Brown

Appellant Wilson unrepresented

Miss Y. Sibble for Crown

June 21, 1989

ROWE, P.:

On the 2nd of September, 1988 the appellants Paul Wilson and Milton Brown were convicted by His Honour Mr. B. H. B. Reid in the Resident Magistrate's Court at Half Way Tree for larceny and each man was sentenced to pay a fine of \$2,000.00 or serve four months imprisonment at hard labour. They have both appealed. This morning the appellant Brown has been represented by Mr. Norman Manley. Paul Wilson has not appeared and he is not represented.

The Crown's case was built around the fact that on the 27th of July, 1988, the National Water Commission possessed a five-ton valuable generator, valued at some \$60,000.00 which was on the National Water Commission compound at Marescaux Road. The premises are secured. There are guards posted at the entry gates and the exit gates. At about 2:15 in the morning of the 27th of July a truck was driven into the

premises. It was driven by Mr. Paul Wilson, one of the appellants, and according to the witnesses for the Crown, the passenger in the front of the cab was the other appellant Brown. When the Security Guard asked the driver to sign a register attesting to his arrival on the premises in the particular vehicle at that hour, the driver simply waived him aside and went and parked the truck at a particular point in the premises. This caused the Security Guard, one Mr. Morris Martin, to become suspicious. He asked his fellow guard, one Souza, to go and enquire as to what was happening where the truck was parked, and Souza gave evidence that when he went to a particular place in the compound he saw the two appellants, who were both familiar to him, in the process of hoisting the National Water Commission's generator on to the back of the truck. The appellant Brown was standing close by the truck while the appellant Wilson was manipulating the control of the hoist, and in this manner the generator was put on to the truck.

Mr. Souza challenged the men, enquiring if they had been given clearance to remove the generator and the appellant Brown said: "Everything is cool. Everything is under control". Souza turned to the appellant Wilson and repeated his question and he got a reply similar to that which had been given by the appellant Brown.

The truck was driven with the generator, so the Crown said, back to the exit gate where Mr. Martin again requested the driver to sign that he was going out at that hour and the appellant Wilson waived him away and did not sign.

Mr. Martin said he knew both Wilson and Brown before and neither Mr. Souza nor Mr. Martin were in any doubt, in their evidence before the Resident Magistrate, that these two appellants were the men who had entered and left the premises that night with the Water Commission's generator. Incidentally, that generator has not been seen since by the persons to whom it rightfully belong.

At trial the defence was an alibi. It was said that these two appellants were in the bosom of their families and could not be driving

into and out of the Water Commission's premises at 2:15 a.m. in the morning.

The learned Resident Magistrate, in his findings of fact, held that neither of the two Security Guards were accomplices. He said he carefully scrutinized the evidence of each Security Guard to see if they were lying, especially if either of them might have been prompted to tell lies in order to serve his own interest. The learned Resident Magistrate found that the discrepancies between the two witnesses were inconsequential, that their testimony was emphatic and truthful. He accordingly accepted the evidence of the witnesses for the Crown, rejected the alibi of both appellants, found them guilty and imposed the sentences.

Mr. Manley has, in a series of grounds, complained that the verdict was unreasonable in relation to the appellant Brown, and was not supported having regard to the evidence. He sought to say that this ground could be supported because the witness Souza had told the Chief Engineer of the Water Commission a story somewhat inconsistent with that which he told the Court and that although his explanation for having done so was regarded by the learned Resident Magistrate as plausible, this was not sufficient to support the Resident Magistrate's finding that he was a truthful witness. Mr. Manley said that the Resident Magistrate should have gone on to find, not only that the explanation was plausible, but that it was in fact reasonable.

We think that in the context of the case, the explanation which Souza gave, i.e., that he was afraid in the first instance to name the persons who were involved in the removal of the generator, having regard to what he knew of the temperament of the Water Commission workers, was, in fact, reasonable and could have been properly accepted by the Resident Magistrate. In the circumstances, we find no merit at all in that particular ground of appeal.

Mr. Manley argued that the evidence of identification was insufficient as there was no direct evidence of the lighting which existed in the Guard-Post and that, therefore, it is possible that the witnesses

could not see within the cab of the truck so as to be able to identify the passenger, who the witnesses said was the appellant Brown. We think that there is absolutely no substance in that. The witness Martin, on two occasions, went to the cab of the truck and handed the document which he wished to be signed by the driver to the appellant Wilson and it is inconceivable that he would not have had an opportunity to see the person who was in the passenger seat. In addition to this, Mr. Souza said he had spoken to Brown and Brown had answered him at a point where the truck was parked while the generator was being hoisted on to it and there was evidence, from Mr. Martin, that there was light in that area.

We think, therefore, that in its totality, there was abundant evidence that the appellant Brown had participated fully in the theft of this valuable generator and that he obtained the benefit of the Magistrate's generosity in being fined the insignificant sum of \$2,000.00 for this crime against his employers.

The appeals are dismissed and the convictions and sentences are affirmed in both cases.