

C.A. Criminal (1) Company's affairs - (2) causing valuable security to be delivered by means of false pretences (3) attempting to cause valuable security to be delivered by means of false pretences) - Evidence - whether verdict unreasonable and could not be supported by evidence - whether could properly rejected - whether could have had substantial doubt - whether should have disqualified self.

Magistrate's sentence: whether custodial sentence desirable - JAMAICA - Appeal dismissed - sentence confirmed

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 27/93

No case for appeal

COR: THE HON MR JUSTICE CAREY J A
THE HON MR JUSTICE FORTE J A
THE HON MR JUSTICE PATTERSON J A (AG)

REGINA VS ROBERT HILL

Patrick Bailey & Dianne Boreland for appellant

Lloyd Hibbert, Deputy Director of Public Prosecutions & Deborah Martin, Crown Counsel for the Crown

Crim. Rev.

March 1, 2, 3 & April 12 1994

PATTERSON J A (AG)

On 5th February 1993, at the Sutton Street Resident Magistrate's Court for Kingston, the appellant was convicted on indictment of conspiracy to defraud, five counts of causing valuable security to be delivered by means of false pretences, and of attempting to cause valuable security to be paid by means of false pretences. He was sentenced to two years imprisonment at hard labour concurrent on each count. He appealed against those convictions and sentences and we now state our reasons for dismissing his appeal.

The appellant was charged jointly with Canute Saddler, Michelle Saddler, Meera Manufacturing Company Limited, Meera Marketing Company Limited and Stepshonics Limited, but after the opening of the prosecution's case, the companies pleaded guilty to the charges preferred against them, and the prosecution offered no evidence in respect of the charges against Canute Saddler and Michelle Saddler, who were discharged. Thereafter, the trial proceeded against the appellant alone.

In 1989 the appellant was appointed as a committee clerk in the House of Parliament. He was assigned the duty

to update and keep inventories of government property in official residences occupied by members of parliament. Whenever goods were supplied to those residences, it was the duty of the appellant to go to the residences and physically check to see that the goods billed by the supplier for payment were actually supplied. He would then enter those goods in the inventory and certify that this was done by signing the bill. The parliamentarian occupying the house or his agent was also required to sign the bill in acknowledgement of the receipt of the goods and services stated therein. After that was done, it was the appellant's duty to submit the bill to the Clerk of the House for him to approve payment. The Clerk of the House would approve payment of the bill on the strength of the appellant's signature. Thereafter the bill would go to the accounts branch where a cheque would be prepared and paid to the supplier.

The charges against the appellant stem from bills signed or presented by him to the Clerk of the House to be approved for payment, a number of which were actually approved and paid. It was subsequently discovered that some of the items listed on those bills and certified by the appellant as having been supplied and entered in the inventory, were in fact never supplied. Those bills were presented by Meera Manufacturing Company Limited, Stepshonics Limited and Dimensions Limited claiming that the amounts were due and owing to them for goods and services which they had supplied at the residences of various parliamentarians and at the appellant's residence also. Canute Saddler is chairman of the board of directors of Meera Manufacturing Company Limited Meera Marketing Company Limited and Stepshonics Limited. His wife, Michelle Saddler is the managing director of Stepshonics Limited.

The appellant was charged firstly with the offence of conspiracy to defraud. The prosecution charged that on divers

days between December 1989 and February 1991, the appellant conspired with Canute Saddler, Michelle Saddler, the companies they represented and other persons unknown, to defraud the Government of Jamaica. The evidence clearly established that there was an agreement between the appellant and others to submit bills to the House of Parliament which would falsely represent that goods had been supplied and services performed at the residences of certain parliamentarians, with the intention that those bills would be honoured.

There was no direct evidence in proof of the actual fact of the conspiracy but there was evidence of several distinct acts done by the appellant in conjunction with the others over the period of time. The evidence of the conduct of the appellant in dealing with the bills in the course of his employment, left no doubt that there must have been the conspiracy contended for by the prosecution. The inference was quite inescapable, having regard to the facts which the learned resident magistrate accepted as proved and it may be that was the reason why the conviction on this count was not challenged except in a general way.

The next charge against the appellant was that he, with intent to defraud, caused a valuable security, namely a cheque drawn on the Bank of Jamaica for \$143,270.11 to be delivered to Dimensions Limited "by falsely pretending that the amount was due and owing to Stopshonics Limited and Dimensions Limited for goods and services supplied by them" as claimed on invoices #10803, #1264, #1265, #1266 and #12774.

The evidence in support of this charge may be summarised as follows. On the 31st January 1990, an invoice was issued from the House of Parliament to Dimensions Limited requesting them to effect repairs to certain items of furniture and also to supply items of new furniture at the residence of the Hon. Desmond Leaky of No 2 Kingsway, Kingston 10.

Mary Amos was then the managing director of Dimensions Limited, and on completion of the work she submitted to Parliament an itemized bill dated March 10 1990, showing the work done, the goods supplied and the price of each item. The bill amounted to \$44,656. That bill was never presented to the Hon. Desmond Leaky or to the Clerk of the House, or to the accountant at the House of Parliament, whose duty it was to pay. Instead, the appellant submitted another bill to the Hon Desmond Leaky for him to certify that the work had been done and the goods supplied, but that bill did not list the price of each item. Subsequently, the appellant presented the certified bill to the accountant but by then the price of each item had been inserted and four other items added. The price of all the items were much more than what was quoted in the original bill submitted by Dimensions Limited, and this bill amounted to \$143,270.11. It was on the strength of that bill that the accountant paid out the full amount of \$143,270.11 to Dimensions Limited on the 11th May 1990.

The appellant's signature did not appear on the face of the bill to signify that he had checked it, and entered the furniture supplied in the inventory. This formed the basis for Mr. Bailey's contention that the verdict as regards this count was unreasonable and could not be supported by the evidence. He argued that the prosecution had failed to establish that the appellant caused payment of the valuable security, having regard to the evidence of the system in place. He submitted that the bill was neither the proximate nor the effective cause for the delivery of the valuable security.

In our judgment, although the system had not been adhered to, there was clear evidence that the appellant had submitted the bill to the accountant, a bill which the learned resident magistrate rightly found to be "doctored," and that on the strength of that bill, the amount of \$143,270.11 was

paid to Dimensions Limited instead of the amount of \$44,656 which was due to them. From the amount of \$143,270.11, Dimensions Limited paid Stepshonics Limited three amounts viz, \$29,301.32, \$35,727.70, \$41,210. Those amounts were paid for goods which had been delivered to the appellant on the 16th March, 19th March and 5th April, 1990 by Stepshonics Limited and charged to the account of Dimensions Limited. None of those goods went to the residence of the Hon. Desmond Leaky or indeed, to the residence of any other parliamentarian.

The appellant's evidence was that Stepshonics Limited supplied him with the goods on consignment which he sold on commission, but the learned resident magistrate rejected his evidence.

It seems abundantly clear that the appellant knowingly presented a false bill to the accountant at the House of Parliament with the intent that it should be honoured. His indebtedness to Stepshonics Limited would then be liquidated from the amount paid on the false bill. That was exactly what transpired, and in our view, there was ample evidence from which the learned resident magistrate could draw the inference that it was the appellant who "doctored" the bill and caused an excessive amount to be paid to Dimensions Limited. We did not find any merit in the arguments of the appellant's counsel on this score.

The other two counts presented against the appellant related to amounts which he caused to be paid on the 28th September 1990 and 26th October 1990 to Meera Manufacturing Company Limited by falsely pretending that those amounts "were due and owing to Meera Manufacturing Company Limited for goods and services supplied by the said Meera Manufacturing Company Limited as claimed on invoice dated August 10 1990."

The evidence in support of these counts clearly established that the appellant submitted a bill to the accountant for payment of \$616,000 being the cost of goods supplied and services rendered by Meera Manufacturing Company Limited at the residence of the Hon. Ben Clare. The bill was signed by the appellant to signify that it was correct and that the goods and services had been supplied and the new items of furniture entered in the inventory.

The bill was shown to be false. Some of the items listed came from the residence of another parliamentarian while other items were installed by the landlord prior to his leasing the premises to Parliament. The learned resident magistrate accepted the evidence that the bill presented by the appellant for payment did not emanate from Meera Manufacturing Company Limited. He found as a fact that the appellant knew that the goods supplied to the Clare's residence did not come from Meera Manufacturing Company Limited. He also found as a fact that the appellant was the "author" of the false bill, and that he presented it and caused payments to be made on it. The payments were \$150,000 on 28th September 1990 and \$300,000 on the 26th October 1990.

The false bill as presented was signed by Minister Clare signifying that the goods and services were supplied. His evidence was that he had previously said he did not sign the bill. He gave an explanation which the learned resident magistrate accepted. In effect, he said that the appellant presented the bill to him and he signed without scrutinizing it and gave it back to the appellant.

Before us, heavy weather was made of this fact and counsel submitted that having regard to the previous denial of Minister Clare that he had signed the document, the learned resident magistrate should have regarded the explanation as a "recent concoction" and reject Minister Clare's evidence. It is true that the Minister did make a previous inconsistent

statement, but it was within the learned resident magistrate's discretion to accept or reject his explanation. He accepted the explanation, and in the final analysis, it was for him and him alone to say whether or not he could believe the witness. It is clear that he applied his mind to this issue, and he has demonstrated in his findings of fact that he was quite aware of the manner in which the evidence should be viewed. He rejected the evidence of the appellant on this score. We found no reason to disturb the convictions on these counts.

The next two counts charged the appellant for causing valuable securities to be delivered by means of false pretences. The evidence disclosed that the appellant admitted he prepared three invoices dated 19th June 1990 on Stepshonics Limited stationery purporting to show that goods and services had been delivered by Stepshonics Limited to the residence of the Hon. Sam Lawrence. The invoices were presented by the appellant with an unsigned covering letter dated August 12 1990, purporting to come from Stepshonics Limited requesting urgent attention to the matter. Two of the invoices were signed by the Hon. Sam Lawrence signifying that the items listed were delivered, and the appellant wrote on the covering letter "checked - O.K." and signed his name with the date 14th August 1990. The three invoices, which totalled \$512,557, were presented for payment but one item for \$47,861 was not approved by the Clerk of the House, and consequently only \$464,696 was paid to Stepshonics Limited by cheques for \$150,000 (dated 28th September 1990) and \$314,696 (dated 12th October 1990).

The invoices were not genuine. Certain items listed on the first and second invoices which were signed by the Hon. Sam Lawrence were in fact received by him, but when he signed, the prices of these items had not been inserted. After he signed, the invoices were altered to include additional items that were never supplied to him, and the third invoice was totally false in that he had not seen it and those items listed therein were not supplied.

The appellant explained that he assisted Mrs. Saddler of Stepshonics Limited to write up the invoices at the request of the Hon. Sam Lawrence. The court rejected the appellant's evidence and accepted the evidence of both Mr. Lawrence and Mrs. Saddler that they had nothing to do with the preparation of those invoices.

Before us, counsel argued that the court ought not to have rejected the appellant's explanation since the evidence showed that Mrs. Saddler went to Parliament and collected both cheques. In our view, the fact that Mrs. Saddler collected the cheques does not detract from the plain evidence of the part the appellant played in causing the payments to be made. There can be no doubt that he knew of the falsity of the invoices and that he nevertheless certified them as being genuine. But for his actions, the invoices would not have been paid. The evidence in support of these counts was overwhelming.

The final count charged the appellant with an attempt to cause valuable security to be paid out by means of false pretence. Between the 30th April 1990 and the 12th February 1991, the appellant presented a number of invoices to Parliament for payment, purporting to show that Stepshonics Limited had supplied goods and services to Parliament amounting to \$539,357.96. These bills were not paid, and the appellant contended that they were mistakenly submitted to Parliament by Mr. Saddler. He said he had a private arrangement to receive goods from Canute Saddler on consignment, and the bills were intended for him personally and not for Parliament. Saddler denied any such arrangement, and two of his clerks from Stepshonics Limited testified that they had delivered the goods to the appellant on invoices for the "House of Parliament" and that the appellant signed for the goods. The court rejected the appellant's evidence that the invoices he signed were not intended to be paid for by the

House of Parliament, and also that there was a consignment agreement between the appellant and Canute Saddler. The court found as a fact that the appellant "received and signed for goods billed to Parliament to pay for."

Counsel submitted that having regard to the totality of the evidence, "the learned Resident Magistrate was in duty bound to recognise the existence of an objective and substantial doubt, and accordingly, should have acquitted the appellant." We examined the records carefully and we gave due consideration to the valiant attempt of counsel to demonstrate that the verdict was unreasonable and could not be supported by the evidence. In our view, the evidence was quite overwhelming. It was a matter of fact for the learned resident magistrate. There could be no doubt that the appellant was the mastermind behind a scheme to defraud the Government of Jamaica of large sums of money. He clearly betrayed the trust reposed in him by virtue of his office in Parliament. His deceit was profound, and without doubt, he profited handsomely from it. We saw no reason why the verdict should be disturbed.

Counsel for the appellant raised two other points. Firstly, he submitted that the learned resident magistrate erred in not disqualifying himself from sitting, having regard to what he said transpired before the presentation of the evidence against the appellant. Secondly, he submitted with tongue in cheek, that a custodial sentence in this case was not desirable. We find it quite unnecessary to deal with those points in any detail, and we trust that counsel will not consider it to be discourteous if in a summary manner, we say that we have considered those points and have concluded that they are without substance. No real reason was shown why the learned resident magistrate should have disqualified

himself and we considered the custodial sentence to be not only proper but quite lenient.

We accordingly dismissed the appeal and affirmed the convictions and sentences.