JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 26/92

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE WOLFE, J.A. (AG.)

REGINA

VS.

WAYNE RAMSAY

Carlton Williams for the Appellant

Miss Diana Harrison for the Crown

July 16 and September 21, 1992

ROWE P.:

When we allowed this appeal on July 16, quashed the conviction and set aside the sentence, we promised to reduce our reasons therefor into writing, a promise we now keep.

Quality Dealers Ltd. manufactured roof tiles at its Red Hills Road plant in St. Andrew. These were distinctive tiles called "decro-tiles" manufactured under a patent granted exclusively to Quality Dealers in Jamaica. This company acted as roofing contractors and any unused tiles at a building site remained the property of the company. Matthew and Clarke of Mandeville were sub-contractors of Quality Dealers, and Dennis Selvright of Falmouth was a customer, to both of which decro-tiles were supplied on condition that they maintain the

same contractual arrangements with clients as does Quality Dealers. As an exception to the general rule there were over-the-counter sales of decro-tiles of 20-80 sheets per customer, to each of whom a receipt was given.

The appellant had been a salesman with Quality Dealers for about two years prior to August 13, 1988. If so authorised by a senior officer, the appellant could make deliveries of decro-tiles to contract customers. On Saturday, August 13, 1988, the Factory and Warehouse Manager of Quality Dealers observed the appellant drive a pick-up into the Mineral Heights housing complex from which he later delivered a quantity of decro-tiles to one Mr. Omfroy. First, however, when the Factory Manager recognized the appellant, he approached him and enquired if the appellant had been sent from the office to summon him, to which the appellant replied: "No" and added that the Factory Manager should not mention the decro-tile delivery at the office.

Mr. Spence was in no mood to enter into that conspiracy and on the following Monday he duly made a report at the office. Some 160 sheets of decro-tiles were removed from Omfroy's premises on August 15 and taken to the May Pen Police Station. These tiles were identified as having been manufactured by Quality Dealers after August 3, 1988. The prosecution sought to prove that these decro-tiles were the property of Quality Dealers and elicited evidence from Mr. Walker, its Managing Director that:

> "I checked the records and found that none of the new-cut tiles were sold to Matthew and Clarke or Mr. Seivright."

No evidence was led that there was a depletion of Quality Dealers' stock or that the stock was such that a loss of 160 tiles could not be physically discovered. This led the defence to submit at the close of the case for the prosecution that the prosecution had failed to establish that any goods were stolen or that

the appellant was the thief. This submission was repeated before us in an elongated form.

Mr. Williams submitted that the Crown failed to prove that the 160 decro-tiles delivered to Mr. Omfroy by the appellant could only have come from Quality Dealers in an unlawful way. He complained that the learned Resident Magistrate admitted hearsay evidence from Mr. Walker as to the result of the check he made of records which were not compiled by him. In R. v. Homer Williams [1969] 11 J.L.R. 185, this Court, following Myers v. D.P.P. [1964] 2 All E.R. 881; [1965] A.C. 1009, held that evidence of the serial number of a bicycle derived from invoices could only be received in evidence if given by some person who had prepared the invoices or perhaps had witnessed their preparation or had made a physical check of the serial number of the bicycle against the invoices. R. v. Homer Williams (supra) was followed in R. v. Margaret Heron, R.M.C.A. 1/83 (judgment delivered on 24/3/83).

In order to determine whether there had been over-the-counter sales of 80 tiles to one or more persons in the relevant period or to either of Quality Dealers' Contractors, the prosecution ought to have brought the makers of the records which were eventually perused by Mr. Walker. This the prosecution failed to do and consequently Mr. Walker's evidence in this regard was inadmissible as hearsay.

The learned Resident Magistrate found that it was proved beyond reasonable doubt that the decro-tiles the subject-matter of the indictment were the property of Quality Dealers Ltd. She referred to the date of their manufacture and to the conduct of the appellant when he realized that a company official had caught him in the act of delivering these tiles to Mr. Omfroy. She found that the defence was utterly unmeritorious and concluded that the appellant took the decro-tiles from Quality Dealers' stock with the intention to steal. Nowhere in her Findings of Fact did she allude to the hearsay evidence referred to earlier.

In our view the no-case submission ought to have been upheld. At that stage the prosecution had shown at the very highest that the appellant had behaved in a suspicious manner when he attempted to silence the company's Factory Manager. One possible explanation for such behaviour was that it was contrary to the employer's rules for a salesman to deliver decro-tiles to purchasers without superior permission.

In the absence of the evidence from Mr. Walker that there had been no sales to the company's contractors over the relevant period, one cannot say that the learned Resident Magistrate could have drawn the inference that the decro-tiles were stolen from Quality Dealers Ltd. However unmeritorious the defence turns out to be, if the accused ought not to have been called upon at the end of the prosecution's case, he is entitled to succeed on appeal on this ground alone - Abbott v. R. [1955] 2 Q.B. 497.