

JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL CRIMINAL APPEAL NO: 79/89

BEFORE: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Forte, J.A.

REGINA v. WESLEY HENRY
DANIEL O'CONNOR
RICHARD CASE
ASTON LENNON
WINSTON BONNER

Leon Palmer for Henry

Earle Witter for O'Connor, Case & Bonner

Bert Samuels for Lennon

Brian Sykes for Crown

January 16 & February 7, 1990

CAMPBELL, J.A.

The appellants were all police officers, Henry and O'Connor at the time of the incident held the rank of Sergeant, Case held the rank of acting Corporal while Lennon and Bonner were constables. Between the night of February 28 and the early morning of February 29, 1988 the store of Courts Jamaica Limited fronting on 70B King Street with its rear abutting on Temple Lane was broken into and furniture, household equipment, electronic equipment and appliances were stolen therefrom to the value of \$152,000.00. The appellants were charged together for store breaking and larceny alternatively each was charged with receiving.

There was evidence that at the time when these goods were being loaded on to a truck in Temple Lane a green police

jeep came by with policemen in it. The jeep stopped opposite the truck, a policeman came out and spoke to someone in the lane by the truck. The jeep then left and proceeded further up Temple Lane where it parked. In all probability it was this green Land Cruiser jeep which was seen parked behind the Supreme Court Building around midnight by District Constable Rodney Ellis who about that time had left City Centre Police Station to investigate suspicious movements of a man and woman at the intersection of Tower Street and Temple Lane. This District Constable on recognizing that the jeep was a police jeep, tooted his horn and having obtained in response a toot of the horn of the police jeep, was presumably satisfied that his suspicions were unfounded. He accordingly returned to base. He did not record the registration number of this jeep which would have likely assisted in identifying the police officers who were undoubtedly providing cover for the store breaking and larceny that night or early morning.

In the case of Henry, there was evidence that he was actually seen in a police patrol car in Temple Lane some time later, even though the patrol area to which he was assigned with Lennon as observer, did not extend anywhere near to Temple Lane. The evidence is that Henry was passing the premises which had been broken as if he was unaware of the occurrence. When he was alerted to this fact, he promised to return but never did, nor did he make any report whatsoever to any police station of that of which he was at least now apprised.

There was thus cogent evidence that goods the property of Courts Jamaica Limited had been stolen following on the store-breaking. There was also evidence that police officers were involved though the extent of their involvement was at the time uncertain.

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Investigations were mounted by Detective Inspector Owen Smith and between him and Corporal Jasper Henry the undermentioned pieces of evidence implicating the appellants were adduced.

1. In respect of Wesley Henry a GTR Television set was taken from his home on 3rd March, 1968. He was shown this Television on 4th March and informed by Detective Inspector Owen Smith that from the latter's investigation the Television was 'allegedly stolen from Courts which was broken into between the 27th and 29th February'. The response of Henry was that he was driving through the area on the night of the 28th and he saw a T.V. on the road side on Temple Lane and he took it up. Detective Smith admitted that he did not caution Henry in the exact words prescribed for a caution but had told him that as a colleague he is aware of his rights.
2. In respect of Case and Bonner, Detective Inspector Owen Smith went to their respective homes. In each case he told them that he was searching for a T.V. which each had taken the night Courts Ltd had been broken into. In the case of Case he did not reply. In the case of Bonner he denied taking any T.V. They were taken to the Detective Inspector's Office who again told them of the information which he had, in the presence of Henry and informed them of their rights. They then informed the Detective Inspector that they were each prepared to hand over the T.V. that they had taken the night Courts was broken into. They requested private and not police transportation. This request was granted and they each returned a T.V. set, a G.T.R. by Bonner and a Home Electrix T.V. by Case.
3. In the case of O'Connor the evidence of Detective Inspector Owen Smith is that he spoke to O'Connor reminding him that as a colleague he was aware of his rights. He went on to inform O'Connor that he Detective Inspector Owen Smith had information that he

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O'Connor had taken up a piece of component set during the night that Courts Ltd was broken into. O'Connor admitted by saying 'yes' and volunteered to hand it over to the Detective Inspector. He did hand over a Black Magic Component Set.

4. In the case of Lennon, the evidence of Detective Inspector Owen Smith is that in his presence he heard Wesley Henry request Cpl. Jasper Henry to proceed to the home of Lennon and collect the component sets from him. The evidence of Cpl. Jasper Henry is that he proceeded to the home of Lennon and informed him that Wesley Henry had sent him to get something. Lennon in response brought out four pieces of 'Amplifier looking instruments' which turned out to be an AKI component set. Lennon's house had earlier been searched by Detective Inspector Owen Smith but the component set was not found.

Ownership of the above goods was claimed by Courts Ltd in the presence of the appellants.

As against these pieces of evidence, Henry rested his case on a no case submission, thus he gave no explanation of his possession nor evidence challenging the evidence of Detective Inspector Owen Smith; O'Connor denied on oath the truth of the evidence given relative to him by Detective Inspector Owen Smith. He claims ownership of the Component Set. Case, Lennon and Bonner each made unsworn statements, Case and Bonner each admit in their respective statement that Detective Inspector Owen Smith did make known to them in words similar to those given in evidence by the latter the purpose of his visit and search of their respective homes. They each however said that the televisions which they subsequently handed over to him were seen by him during the search and he had remarked that they did not correspond to those for which he was searching. They did not give any

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explanation of how they came into possession of the goods. Lennon admits that the AKI Component Set was handed over by him to Cpl. Jasper Henry. He says it is his but does not say how he came into possession.

The learned Resident Magistrate rejected the defences put forward by the appellants and found that on the evidence they knew that the goods which they had in their possession were stolen from Courts Jamaica Limited. In our view there was ample evidence as summarised above to support the learned Resident Magistrate's conclusion. The appellants on the evidence could have been found guilty of store breaking and larceny. They are fortunate to have been found guilty of the lesser offence of Receiving.

None of the submissions made to us by their respective counsel contained anything of substance. We accordingly dismissed the appeals on January 16, 1990 confirmed the convictions and sentences and promised then to put our reasons therefor in writing, this we have now done.