

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 19/95

**COR: THE HON MR JUSTICE RATTRAY - PRESIDENT
THE HON MR JUSTICE PATTERSON, J A
THE HON MR JUSTICE HARRISON, J A (AG.)**

**PATRICK REYNOLDS)
MOSES TRESTON) V REGINAM**

Mrs. Antoinette Haughton-Cardenas & Mr. K. Porter for Reynolds

Mr. K. Porter for Treston

Miss Audrey Clarke for Crown

22nd May, 1996

RATTRAY, P

The appellants were found guilty on an indictment charging them with three counts of conspiracy to rob, on count 1 Sylvia Jones, count 2 the Jamaica Telephone Company Cellular Commercial Office and count 3 the Kingston Branch of the National Commercial Bank Ltd. They were sentenced to terms of imprisonment.

The appeal of the appellant Patrick Reynolds, as argued by his counsel Mrs. Cardenas challenges the conviction in relation to the Jamaica Telephone Company Cellular Commercial Office as to whether a conspiracy ever came into existence. In our view, there was evidence which disclosed a clear conspiracy to which the appellant was a party in respect of the robbery planned against the Jamaica Telephone Company Cellular Commercial Office, even though the robbery did not in

fact take place. Mrs. Cardenas argued her second ground of appeal which related to the finding of the Resident Magistrate that the evidence of the chief witness Michael Wilson, an accomplice was corroborated. This is how Mrs. Cardenas put it. The learned Resident Magistrate found that Mr. Wilson's evidence was corroborated when in truth and in fact it was not.

The law is clear that in a trial with a jury, the trial judge in relation to evidence given by an accomplice must warn the jury that although they may convict on the uncorroborated evidence of the accomplice, it is dangerous for them to do so. In relation to a judge sitting alone as in this case, it is our view that what is necessary is for this court to be satisfied that it is exhibited by the findings of the learned Resident Magistrate: that the learned Resident Magistrate recognized the danger of convicting on the uncorroborated evidence of an accomplice. The reasons for this are obvious; if a person is an accomplice that person may have a special reason in order to avoid being charged himself, why he may wish to lie on his accomplices. He may however proceed to convict the accused notwithstanding the absence of the corroborative evidence if he is nonetheless satisfied, having recognized the danger of convicting on the evidence of the accomplice, that his evidence is reliable and that the guilt of the accused has been established on the standard required in the criminal law, that is, beyond a reasonable doubt.

The record shows that in the findings of fact the Learned Resident Magistrate clearly recognized that Michael Wilson was an accomplice and stated as follows:

"Accordingly, this court warned itself of the dangers inherent in accepting the evidence of an accomplice."

In examining the evidence, the learned Resident Magistrate pointed out that Detective Corporal Dadrick Henry gave evidence of a finding of a maroon red Mitsubishi Galant

motor car at the Sutton Place Hotel with Government registration plate # 201239 and "this corroborates evidence of Wilson with respect to the car taken from the garage in Washington Boulevard." It is clear that what the Resident Magistrate was saying, that this was evidence which was confirmatory of the evidence of Wilson in relation to the role played by the Mitsubishi motor car.

Det. Inspector Robinson gave evidence to the finding of the duffel bag with guns at 10 Dyna Avenue in St. Andrew and the Resident Magistrate refers to this as also corroborating Wilson's testimony. He relates this to Wilson's testimony concerning the role of the guns and where they were to be found. The Resident Magistrate then refers to the witness Robert Willis who also gave evidence of conversing with Reynolds in the Half-way-tree lock-up as corroborating Wilson's testimony.

Let us examine Robert Willis' evidence. Willis testified that "he was in cell with the appellant Reynolds and Reynolds asked him if he had seen Michael Wilson. I told him no, he then said to me that something go on and the police them charge him for Bank Robbery and Conspiracy. That there were seven charges in all the police charged him for". Reynolds further said to Willis that "he had not seen Mickey and him don't know what a go on because certain things them charge him for is only Mickey know them things." He then asked, "if he has a phone at his house and he talk on the phone, if them bug his phone, if that can use in court against him. I then told him if it is taped on a cassette then it can be used in court against him."

Willis further stated - "Before leaving, Patrick said that if I saw Mickey I should find out from him what a go on because the things them charge him for only Mickey could have said them things bout him."

This evidence of Willis , in our view clearly corroborates the evidence of Michael Wilson, referred to as Mickey, that the appellant Patrick was involved as part of the conspiracy. That is the only reasonable interpretation that could have been put on this bit of evidence and it links Patrick Reynolds into the conspiracy.

In relation therefore to the appellant Patrick Reynolds, the submissions made by Mrs. Cardenas concerning the absence of evidence upon which the Resident Magistrate could have relied, as corroboration were not in our view well founded.

With respect to the applicant Moses Treston, Mr. Porter has first challenged the admissibility of the statement given by Treston on the ground that no caution had been administered to the appellant before the giving of the statement. It is clear to us that the statement was taken during the course of the investigation at a time when there was no decision to charge Moses Treston with any offence and it was therefore not necessary at this stage to administer a caution and the evidence was therefore admissible. In fact after he had given the statement Treston was released from custody.

Mr. Porter has further submitted that there was no concluded agreement in relation to the conspiracy concerning the robbery of the Telephone Company Cellular Commercial office. We are unable to agree with his submission because a careful reading of the evidence shows that there was an agreement in relation to the robbery of the office, but that there was uncertainty as to the time at which the robbery should take place. The date was postponed from the 14th of one month to the 14th of the next month.

Mr. Porter adopted Mrs. Cardenas' submission on corroboration and specifically in relation to count 1 and 2 argued that there was nothing to support the evidence of Wilson in regard to these two counts.

The Resident Magistrate clearly in our view grasped the full facts of this matter and he having considered, despite the fact that he was an accomplice that he could rely on Wilson's evidence also found sufficient evidence to link the appellant Moses Treston otherwise called "Rice" to the agreement to rob the Telephone Company Cellular Commercial Office.

We have during the hearing pointed out the pieces of evidence which support our conclusion on these matters.

We therefore find no ground upon which we can disturb the conviction by the learned Resident Magistrate in respect to either the appellant Reynolds or the appellant Treston.

With respect to the sentences, they reflect in each case less than the maximum which the law allows and considering the seriousness of the offences we will not disturb them.

The appeals are therefore dismissed, the convictions and the sentences are affirmed. Sentences to commence from the 30th of March 1995.