

*1/2 Appeal on Law - R.M. Court - Conspiracy to defraud - 1st class
Police Constables - 1st class - 1st class - 1st class
Appeal dismissed - No case - 1st class - 1st class*

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IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 40/89

EVIDENCE
Criminal Process

BEFORE: THE HON. MR. JUSTICE ROWE, P.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

JOSEPH ROBINSON v. REGINA

Mr. Robin Smith for the Appellant

Mrs. Carolyn Reid for the Crown

24th July, 1989

GORDON, J.A. (AG.)

This is an appeal from a conviction on indictment before His Hon. Mr. H.B. Reid at the Half Way Tree Resident Magistrate's Court on the 22nd of July, 1988. The appellant Joseph Robinson was a constable in the Jamaica Constabulary Force and he was on motorize patrol on the 16th of April, 1988 in the Barbican/Jacks Hill area of St. Andrew. He was the observer in a police motor car No. 61 driven by a co-accused Kingsley Gunter, an Acting Corporal of Police with some thirteen years service in the Jamaica Constabulary Force.

On that day the complainants Mr. and Mrs. Rubini, Italians visiting in the island of Jamaica, were travelling in a motor car following one James Ziadie. Their evidence was that they had some financial transactions with Mr. Ziadie and when they were to collect what Mr. Ziadie had for them he invited them to follow him to his home which was at Jacks Hill. While following his car in their car they were intercepted by the police; the car was searched by the appellant and he produced a bottle with some white substance which was purported to be,

cocaine. While the officers were dealing with the complainant Mr. and Mrs. Rubini, Mr. Ziadie came back to the scene and enquired of them what was happening. He was recognized by Mr. Gunter. He offered to intercede and eventually told Mr. Rubini that what the policemen wanted was money. This was said in the presence of the two policemen, Robinson and Gunter. Mr. Ziadie advised Mr. Rubini to give them money. Mr. Rubini indicated or said he had none. Mr. Ziadie said he knew the policemen well and if Rubini would undertake to give him the money he would placate the policemen for the time being and eventually convey the money to them. The sum which was sought to satisfy the desires of the policemen was the balance of the money, some US\$1,500.00, that Mr. Ziadie had for Mr. Rubini.

When satisfactory arrangements had been made the policemen said to Mr. Ziadie, and I quote, "alright I wi si yu later with the money" and they went away. Mr. Ziadie in order to hold Mr. Rubini to his promise took from him a watch and a chain which he Mr. Ziadie placed in his (Mr. Ziadie's) pocket. Before the policemen left however, Mr. Rubini entreated Mr. Ziadie to return the jewellery and Mr. Ziadie in a magnanimous act returned the jewellery that is the chain but he retained the rolex watch which was valued at some U.S.\$10,000.00.

Mr. Rubini apparently went straight to the police and reported the matter to them. The two policemen and Mr. Ziadie were taken in custody and charged. Subsequently Constable Hugh Simms acting on instructions from Assistant Superintendent Reynolds accompanied Mr. Ziadie to a home on Howard Boulevard in Hope Pastures and from there they proceeded to Jacks Hill Road. Somewhere along the road Mr. Ziadie stopped and threw something outside, he invited the officer to pick it up but to pretend that he had searched for it for sometime. The officer went outside and found that it was the watch which Mr. Rubini

eventually claimed. The watch was returned to Mr. Rubini in the course of the trial.

The appellant was charged with conspiracy to defraud; along with Gunter and Ziadie. Ziadie was charged additionally with larceny. The evidence of other policemen involved in the case is that sometime that same Saturday evening of the 16th April, 1988 by official police radio a call was made to Acting Corporal Gunter relaying a message from Mr. Ziadie that he should make contact with him that same evening. The evidence in the case certainly indicates that there was a conspiracy between Ziadie, Mr. Gunter and officer Robinson to defraud Mr. Rubini of money and in pursuance of that Mr. Ziadie led the Rubinis in a wild goose chase towards his home on Jacks Hill Road there the trap was sprung by the police who were following in a police car.

The Resident Magistrate, having heard the evidence found the two policemen guilty. Mr. Ziadie part-way through the trial threw in the towel and pleaded guilty and left the policemen to battle it out. The findings of fact by the Resident Magistrate were that Ziadie arrived and requested the patrolmen to forbear and purported to offer himself as a hostage should Mr. Rubini and wife fail to attend voluntarily at the police station. He found that the entire episode was pre-arranged by Ziadie with Gunter using messages via police radio transmission. He found also that the appellant Robinson was fully aware of the episodes at Skyline Drive and that he played a minor role. On the evidence it was Robinson who discovered the bottle containing this powder. Gunter's evidence at the trial was that he tasted the powder and he discovered that it was not cocaine, he told the Rubinis that he would have to keep it for investigation to see exactly what it was and that they should attend at the police station sometime subsequently.

The learned Resident Magistrate impose sentences on the two police officers which may be regarded as being very lenient, indeed. The sentences imposed were fines. There are two counts to the indictment; Robinson was fined on the count for conspiracy, the count on which both policemen were charged, \$2,000.00 or six months imprisonment at hard labour. We find there is no merit in the appeal.

The appeal is accordingly dismissed and the conviction and sentence affirmed.