[2019] JMCA Crim 25

JAMAICA

IN THE COURT OF APPEAL

PARISH COURT CRIMINAL APPEAL NO 4/2018

BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MR JUSTICE BROOKS JA
THE HON MISS JUSTICE WILLIAMS JA

CLIVE VIDAL v R

Donald Gittens for the appellant

Mrs Sharon Milwood-Moore and Mrs Monique Corrie for the Crown

9 November 2018 and 12 July 2019

P WILLIAMS JA

[1] Mr Clive Vidal, the appellant, was charged on an indictment containing one count of larceny from the dwelling, the particulars being that "he on diverse days between January to December 2010 in the parish of Manchester did steal from the dwelling of Roy Francis furniture, tools, appliances valued at approximately $700,000.00". The trial commenced on 3 April 2013 in the Parish Court for Manchester before the Senior Parish Judge, Her Honour Mrs Desiree Alleyne. At the end of the trial, which lasted several days

over four years, the appellant was convicted and on 21 June 2017, he was sentenced to a fine of $200,000.00 or nine months' imprisonment.

The prosecution's case

[2] The complainant, Mr Roy Francis, gave evidence that he is a Jamaican residing in Canada since 1984. He owns property at Albion District, Manchester, where he stays when he visits Jamaica once a year. He explained that he and the appellant grew up together and that the appellant had acted as caretaker for his property between 2008 and 2010. The appellant had keys to the premises but did not have his permission to reside there. During this period, he sent millions of dollars to the appellant to "ensure everything was ok". He denied having any other business arrangements with the appellant.

[3] Although his testimony commenced with his visit to Jamaica in December 2010, Mr Francis said that approximately a year earlier he had received a phone call that caused him to call the appellant about items missing from the property. The appellant admitted taking the items and explained that he had "seized them". When asked why he took the items, the appellant responded that it was "for ransom" of $850,000.00. Mr Francis denied owing the appellant any money, telling him "you are crazy, I owe you nothing, put back my stuff".

[4] Thus, upon his next visit to Jamaica in December 2010, Mr Francis said he went straight to the police and reported the matter. He then went to the appellant's home, accompanied by the police. Finding the door unlocked, Mr Francis looked inside and saw

some of the items that were missing from his house. In particular, he said he saw his bed, dresser, fridge, stove, flat screen television, microwave, toaster, blender and kettle.

[5] Later that day he returned to the appellant's house accompanied by a different set of police officers and a Justice of the Peace. The appellant was not present, and the "police broke the door" to gain entry. The items that Mr Francis identified as his were removed. The items included a 19 inch Samsung television that he had purchased in Canada and an LG refrigerator which he had purchased in Jamaica. He also recovered a bed and a dresser. He had provided the appellant with money to purchase those items for him at the furniture store Singer Jamaica Limited.

[6] Detective Constable Richard Case was one of the police officers who went to the appellant's house with Mr Francis. He was at the time stationed at the Scenes of Crime Unit at the Williamsfield Police Station in Manchester. He took photographs of the furniture and other items taken from a room at the house in Albion District. He subsequently downloaded the images on "the master and a working and viewer CD". At the trial, objection was taken to the viewer CD being admitted into evidence.

[7] The Justice of the Peace who accompanied the police officers and Mr Francis to the appellant's house also testified about what had transpired at the house that day. He witnessed the removal of various items of furniture, electrical items and appliances from a room at the house. These items were then photographed by someone he described as "another gentleman who accompanied" them. The Justice of the Peace did not witness any documents being removed from the premises.

[8] Mr Francis denied that the appellant had lived at his house and that any of the furniture, appliance, tools or any other items the appellant had taken from the house had belonged to the appellant. He also denied that the tools recovered from the appellant's house were gifts he had given to the appellant or that any of the appliances recovered actually belonged to the appellant. He further denied having an arrangement with the appellant whereby the appellant would oversee, do construction and caretaking work until the house was sold, and then the appellant would get a percentage of the sale price.

The defence

[9] The appellant gave evidence at trial. He said that he and Mr Francis grew up like brothers and lived in houses six chains apart. In 2006, Mr Francis asked him to renovate his (Mr Francis') house and he "contracted the renovation". There was a plan that after this renovation, they would do an addition of a two-bedroom unit and a one-bedroom unit on the house. The plan also was that after the renovation and construction they would "enter into construction and real estate". The appellant said he was normally a welder but was also a self-employed draughtsman and a farmer.

[10] The appellant explained that he also served as caretaker for the house. Although he had his own home nearby, Mr Francis gave him a flat attached to the house to occupy. He moved into the flat in 2007 at which time it was empty and so he had to furnish it. He purchased some items from Singer Jamaica Limited to do so and had receipts to prove those purchases.

[11] The appellant said he had no problems with Mr Francis and would see Mr Francis when he visited Jamaica once a year. On those visits, Mr Francis would stay with relatives nearby or the appellant would allow him to stay in the flat. The appellant said this was so since Mr Francis had no furniture in the house, which was being renovated, at the time.

[12] The appellant claimed he had done work related to the construction for Mr Francis and had not been paid. Most of the monies Mr Francis sent him was used to pay workers and purchase material for the renovation. The appellant explained that the original agreement was for him to be paid from the proceeds of the business venture they had planned to enter together. However, while Mr Francis was on his annual visit to Jamaica in 2009, the appellant asked him about monies the appellant said was owed. Mr Francis promised to pay him $1,500,000.00 for his services and to send it by way of remittances. The appellant never received the money.

[13] He stopped occupying the flat on 1 January 2010 when Mr Francis asked him to leave and gave him 24 hours to do so. When he left, he took his furnishings with him. He denied taking anything from the flat that belonged to Mr Francis since Mr Francis had nothing there. Although he initially denied having purchased any items for Mr Francis, the appellant subsequently admitted that he had been sent money by Mr Francis to purchase appliances. He had bought a stove from Mr Francis' son who had delivered it to his home. He denied calling Mr Francis and telling him he had taken items belonging to Mr Francis for ransom.

[14] In December 2010, he arrived home one night and found the door to his apartment broken and the apartment ransacked. Several items were missing from inside. All the things missing were his property. It was when he went to the police station to report the removal of the items from his house that he was arrested.

[15] The appellant had one witness in support of his case. A manager from Singer Jamaica Limited testified that although she did not know the appellant personally, the records from the database of the company revealed that he had purchased items from the store, which had been delivered to Albion District. On 9 January 2007 a dresser, mattress and base along with an LG refrigerator was delivered and, on 13 January 2007, a Sharp 20" colour television was delivered.

The appeal

[16] On 27 June 2017, the appellant filed notice and grounds of appeal, which were amended on 8 June 2017 and again on 3 July 2017. At the hearing of the appeal, Mr Donald Gittens, counsel for the appellant, sought and was granted leave to abandon the original grounds of appeal and argue those that were further amended and filed on 6 November 2018. The grounds of appeal filed were as follows:

> "1. The evidence does not disclose by what method or technique the complainant identified to the police the items alleged to have been stolen by the defendant and which were taken from the house of the defendant, and there was no identification of these items to the court at trial, and so the prosecution failed to prove that the complainant was the owner of the items and this proof was a

necessary ingredient for conviction of the defendant.

2. The finding of the court that extreme care was taken by the police to ensure that there was proper documentation of the items taken from the home of the defendant, was unreasonably [sic] since no such documentation either in the form of a list or in the form of photographs was put before the court.

3. The evidence on the case of the prosecution manifestly raises the defence of a claim of right and negatives any intention on the part of the defendant permanently to deprive the complainant of the property alleged to have been stolen by the defendant. In that regard:

   i. The learned trial judge erred in law in failing to accept, that the evidence of the complainant that the defendant told him the complainant that he the defendant took his stuff but that he the defendant did not need them and seized them for ransom, raised, on the case of the prosecution, the defence of a claim of right.

   ii. The finding of the learned trial judge that the defendant demanded the sum of $850,000.00 from the complainant for his the defendant's own stuff, and that that demand was made without a claim of right in good faith, which therefore satisfied the definition of larceny, failed to take into account the reason that the complainant alleged he was given by the defendant for the demand, which reason, if believed, would raise the defence of a claim of right.

   iii. The finding of the learned trial judge, that the view of the defendant that the complainant owes him the defendant money for construction work he the defendant did is the reason he the defendant took the complainant's furniture and other items into his, the defendant's, home and refused to return them to the complainant

unless he the defendant is paid a total of $850,000.00, does not raise a claim of right made in good faith, is unreasonable.

4. The finding by the learned trial judge that the defendant did take for his personal use, money sent to the defendant by the complainant, and the finding that the contrary assertion by the defendant is unrealistic, are unreasonable and unsupported by the evidence of the complainant on which the learned trial judge relies for the findings.

5. The finding by the learned trial judge that the evidence from the manager of the furniture company Singer Jamaica Limited, that the defendant bought items from the company, does not assist the defendant as the complainant did assert that the defendant bought items on behalf of him the complainant, is unreasonable and against the weight of the evidence, since the complainant adduced no documentary or other corroborating evidence of his assertion, and since the documentary evidence from the company lead by the defendant shows that the items were purchased in the name of the defendant, and not in the name of the complainant, or in the name of the defendant on behalf of the complainant.

6. The report by the Department of Correctional Services prepared by [sic] dated March 28, 2017 addressed to the Manchester Parish Court contains derogatory and unfairly prejudicial material against the defendant, and the Reasons for Judgment provided by the learned trial judge does not refer to this report as having been ignored or not taken into account, or at all.

7. Neither the Notes of Evidence nor the Reasons for Judgment nor anything in the record at all, indicates whether, or indicates that, the report by the Department of Correctional Services dated March 28, 2017 was served upon or presented to the defendant or that the defendant was given a

chance to contradict or comment upon the said report before he was sentenced on April 12, 2017.

8. In considering the evidence of the good character of the defendant, the learned trial judge failed to consider the evidence of the Justice of the Peace Stanley Skeene, and relied only on the evidence of the defendant in that regard."

[17] Mr Gittens informed the court that these grounds of appeal were in essence his submissions and that he was prepared not to make any oral submissions. He was urged by the court to nonetheless present his arguments. In his submissions, he largely repeated these grounds of appeal.

The Crown's response

[18] The Crown responded cumulatively to grounds one to five of the appellant's appeal. Crown Counsel, Mrs Monique Currie, submitted that the evidence presented before the learned Parish Court Judge was sufficient to discharge the burden of proof. She submitted further that the issues raised in the appellant's grounds of appeal are issues of fact for the consideration of the tribunal of fact.

[19] She said the court was at liberty to consider the evidence before it and it was open to the learned Parish Court Judge to accept that the appellant did take property belonging to the complainant without the complainant's consent. She submitted that the Crown was tasked to prove beyond a reasonable doubt that the appellant did take the items removed from the complainant's premises and that he intended to permanently deprive the complainant of the said items. The learned Parish Court Judge, in her analysis of the

evidence before her, took into consideration the demeanour of the witnesses, and weighed the evidence presented in determining whether the witnesses for the prosecution were credible witnesses. Counsel submitted that the court accepted the witnesses for the prosecution as credible and came to a just verdict.

[20] Regarding the complaints about the report by the Department of Correctional Services, counsel for the Crown submitted that the appellant had an opportunity to make enquires through his counsel of the Probation Aftercare Officer. She contended that the lack of service of the document did not prejudice the appellant, as there was opportunity to review it on the day of sentencing prior to a plea in mitigation by the appellant's counsel.

[21] Crown Counsel submitted that, in relation to the complaint of the treatment by the judge of the good character evidence, the learned Parish Court Judge did consider the good character of the appellant as it relates to what he had said in his evidence. She conceded that the learned Parish Court Judge did not treat with the good character evidence from the Justice of the Peace. However, she submitted that that evidence did not necessitate a good character direction in and of itself. Having regard to the authorities on the issue, the absence of a good character direction in relation to the evidence of the Justice of the Peace was not detrimental to the safety of the verdict of guilt returned by the learned Parish Court Judge. Counsel cited the cases of **Horace Kirby v Regina** [2012] JMCA Crim 10 and **Patricia Henry v Regina** [2011] JMCA Crim 16.

The issues

[22] The major issues that arise from the grounds of appeal filed are identified as:

1. the failure to identify the items (grounds 1, 2 and 5);

2. the treatment of a claim of right (ground 3 and ground 4);

3. the report from the Department of Correctional Services (grounds 6 and 7);

4. the good character directions (ground 8).

Discussion and analysis

The issue of the identification of the items

[23] These grounds of appeal ultimately concern the failure of Mr Francis to identify the items taken from the home of the appellant to be his. There was indeed no evidence of by what means Mr Francis was able to identify the items to the police. There was evidence that the items were photographed when they were removed from the appellant's home. However, there was objection taken to the viewer copy of the CD containing the photographs being admitted into evidence at trial. The items themselves were not put into evidence at trial.

[24] The evidence of Detective Constable Case and that of the Justice of the Peace supported the observation by the learned Parish Court Judge that the police had taken extreme care to ensure proper documentation of the items taken from the appellant's home. This was not an unreasonable observation despite there being no such documentation put in evidence.

[25] A significant factual matter that is not in dispute is that there were items that were at some point at the premises of Mr Francis which were removed by the appellant. These items were subsequently removed from the home of the appellant and both the appellant and Mr Francis claimed ownership of them. There was never any challenge to the fact that the items removed from the appellant's house were those taken from Mr Francis' house. Faced with this issue, the first important question the learned Parish Court Judge had to decide was whom she believed on the question of ownership.

[26] In the circumstances of the matter, the learned Parish Court Judge had to be satisfied that the items which Mr Francis had the police take from the appellant's house belonged to him. The nature of the items could well have made it difficult for Mr Francis to identify them by any specific means.

[27] On the evidence presented by the Crown there was an admission by the appellant of his taking the items in circumstances where he knew the items did not belong to him. On the case for the defence, the appellant sought to establish that the items taken from his house in fact belonged to him. The diametrically opposed accounts meant it was for the learned Parish Court Judge to make findings as to whom she believed.

[28] The approach of this court when required to review a trial judge's findings of fact in matters such as this is well settled. This court is reluctant to interfere or disturb those findings unless satisfied that the evidence does not support the findings or it is apparent that the trial judge failed to make use of the benefit of having seen and heard the witnesses.

[29] In **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21, Lord Hodge, in delivering the judgment of the Board, recalled the proper role of an appellate court in an appeal against findings of fact by a trial judge. At paragraph [12] he stated:

> "It has often been said that the appeal court must be satisfied that the judge at first instance has gone 'plainly wrong'. See, for example, Lord MacMillan in *Thomas v Thomas* at p 491 and Lord Hope of Craighead in *Thomson v Kvaerner Govan Ltd* 2004 SC (HL) I, paras 16-19. This phrase does not address the degree of certainty of the appellate judges that they have reached a different conclusion as the facts: *Piggott Brothers & Co Limited v Jackson* [1992] ICR 85, Lord Donaldson at p 92. Rather, it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings of fact, which he did in the face of the evidence as a whole. That is a judgment the appellate court has to make in the knowledge that it has only a printed record of the evidence. The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions. Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence: *Choo Kok Beng v Choo Kok Hoe* [1984] 2 MLJ 165, PC, Lord Roskill at pp 168-169."

[30] In this matter, the learned Parish Court Judge's decision rested heavily on her assessment of the credibility of the witnesses. The learned Parish Court Judge demonstrated how she analysed the evidence presented by both the prosecution and the defence.

[31] She did not believe that Mr Francis told the appellant to stay at his premises when the appellant lived six chains from those premises. The learned Parish Court Judge also

found it incredible that there would be a necessity for the appellant to purchase new furniture for that apartment, especially as the appellant testified that his own house was already fully furnished when he left it to occupy Mr Francis' apartment. She said at paragraph 31 of her reasons:

> "Further, Mr. Francis denied that Mr. Vidal stayed at his premises and the court believes Mr. Francis and having observed his demeanour, finds he was a credible witness."

[32] With respect to the stove, the learned Parish Court Judge did not believe the appellant's testimony that Mr Francis' son sold him the stove. In her view, it would be strange for the son who was staying at the apartment and with whom he had an altercation, to sell him the stove when he was leaving. The learned Parish Court Judge found it strange, too, that the appellant, having said that he furnished Mr Francis' apartment, did not buy as basic an item as a stove. She found that Mr Francis had bought the stove for his home as he did other items of furniture, appliances and tools.

[33] She did not find that the evidence from the manager of Singer Jamaica Limited that the appellant purchased items from the company assisted the case for the appellant since Mr Francis testified that the appellant had bought items from Singer Jamaica Limited on his behalf, evidence that she accepted. She was entitled to make that finding.

[34] She was satisfied that the items taken from the appellant's home belonged to Mr Francis. She said at paragraph 30 of her reasons:

> "Therefore, although the court frowns on the fact that Mr. Francis' 'stuff' was returned to him in the absence of the accused Mr Vidal and without a search warrant executed on him, and although the police ensured that there was a proper record of what was removed from Mr Francis [sic] home that did not vitiate the wrong that was done, the court still finds beyond a reasonable doubt that the items taken from Mr. Vidal's home belonged to Mr Francis."

[35] It is therefore correct that there is no evidence of the method Mr Francis used to be able to identify the items in the circumstance. However, the fact that it was not disputed that the items recovered were indeed the same ones that the appellant had carried away from Mr Francis' premises meant that the identification of them was not an issue that affected the ultimate decision for the court. The learned Parish Court Judge cannot be said to be plainly wrong for concluding that the items recovered from the appellant's home were the property of Mr Francis.

The treatment of the claim of right

[36] Mr Gittens submitted that the evidence that the appellant told Mr Francis he had seized the items for ransom for the sum of $850,000.00 raises the defence of a claim of right. The learned Parish Court Judge was faced with the situation where the defence of a claim of right was not relied on and, in fact, the appellant denied making the statements on which such a defence would arise. The learned Parish Judge was however obliged to consider that possible defence even though not relied upon. There would however have to be credible evidence which she could reasonably accept before considering the defence (see **Alexander Von Starck v The Queen** [2001] 1 WLR 1270).

[37] The law is that to constitute larceny, the taking must be fraudulent, intentional and deliberate without mistake and not under a claim of right made in good faith by the person taking. A person has a claim of right where he honestly asserts what he believes to be a lawful claim to property, even though the claim may be unfounded in law or fact (see **R v Bernard** [1938] 2 KB 264). The claim of right is based on the subjective belief of the taker. The claim of right is not confined to the specific property, however, and can extend to cases where what is taken is its equivalent in value.

[38] The learned authors of Archbold's Criminal Pleadings Evidence & Practice, 34th Edition, at paragraph [1469] state:

> "In all cases of larceny, the question whether the prisoner took the goods knowingly or by mistake- whether he took them bona fide under a claim of right, or otherwise- and whether he took them with an intent to return them to the owner, or fraudulently with an intent to deprive the owner of them altogether, and to appropriate or convert them to his own use- are questions entirely for the consideration of the jury, to be determined by them upon a view of the particular facts of the case: *R v Farnborough* [1895] 2 Q.B. 484, followed in *R v Bernhard* [1938] 2 K.B. 264; 26 Cr. App. R. 137."

[39] The evidence from which Mr Gittens submitted that the issue of a claim of right arose came from Mr Francis during his examination-in-chief when he said the following:

> "[The appellant] had been looking after my place from 2008-2009 then to 2010. [The appellant] answered over the phone that 'yes I took them but I don't need them, I seized them'. I said 'why you seized my stuff.' He said 'for ransom'.

> I did not owe [the appellant] any money at that time. I asked him what kind of ransom he said Eight Hundred and Fifty Thousand Dollars ($850.000.00). So my answer to him 'was you are crazy I owe you nothing, put back my stuff'. He just hung up the phone."

[40] The learned Parish Court Judge considered the issue of a claim of right as it arose from the Crown's case in juxtaposition with what was said by the appellant. The difficulty that was posed, however, was that, with the appellant denying that he had told Mr Francis that he was holding the items for ransom and insisting that the items belonged to him, he could not then be viewed as having asserted a claim of right made in good faith.

[41] After her review of the evidence presented, the learned Parish Court Judge commenced her analysis at paragraph 23 of her reasons for judgment with the following:

> "The accused was charged with larceny which is taking and carrying away of anything capable of being stolen without the consent of the owner, with the intention of permanently depriving the owner thereof, without a claim of right in good faith. Mr Francis' allegations that Mr Vidal demanded that Mr Vidal give him $850,000 for his own 'stuff', if believed by the Court will satisfy the definition of larceny and show clearly that Mr. Vidal stole Mr. Francis' property."

[42] At the conclusion of her analysis, the learned Parish Court Judge had this to say at paragraph 37:

> "This court finds that Mr. Vidal is of the view that Mr. Francis owes him money for the construction work he did, and that is the reason he took Mr Francis [sic] furniture and other items into his home, and refused to return them to Mr. Francis unless he is paid eight hundred and fifty thousand dollars

($850,000.00). This is not a claim of right made in good faith, this is larceny."

[43] Although the learned Parish Court Judge ascribed to the appellant a reason for having taken the items in circumstances where he denied taking any items belonging to Mr Francis, her conclusion that it was not a claim of a right made in good faith cannot be faulted. Ultimately, the appellant was not honestly asserting what he believed to be a lawful claim to the goods he had taken from the house of Mr Francis. On the Crown's case, the appellant was purporting to hold the items for ransom for $850,000.00 and there was no other credible evidence in support of a defence of a claim of right. It was proper to assume that the appellant would have permanently deprived Mr Francis of his items if he did not pay the ransom. On the defence, the evidence was that while the appellant asserted there were sums owed, he maintained that the items found at his home belonged to him. Having rejected this assertion by the appellant, there was no proper basis on which the learned Parish Court Judge could have considered a defence of claim of right.

[44] The ground of appeal complaining of her treatment of this issue is without merit and therefore must fail.

The report from the Department of Correctional Services

[45] The report about which the appellant complains is a community report, which was produced, after conviction, for the purposes of sentencing. It did not contain the usual detailed information about the appellant and his personal circumstances as expected in a

social enquiry report and neither did it demonstrate that either the appellant or the complainant were interviewed in the preparation of the report. It contained two sections: the first section referred to the circumstances of the offence and the second, entitled "findings", referred to "information garnered from the community of Albion".

[46] The complaint that this report contained "derogatory and unfairly prejudicial material against the appellant" is well founded. The assertions made by "the community" about the appellant ought not to have formed any part of the consideration of the learned Parish Court Judge in determining the appropriate sentence. However, the failure of the learned Parish Court Judge to expressly indicate that she had ignored or not considered it is not a ground of appeal that affects the sustainability of the conviction.

[47] The fact that there is also no indication as to whether the report was served on the appellant such that he was given a chance to contradict or comment upon it is equally not a ground of appeal against the conviction that is of any merit.

[48] In any event, there is no challenge made about the sentence eventually imposed. This was the only matter that the report could have influenced and no suggestion has been made that the report adversely affected the sentencing process resulting in a sentence that should be set aside.

The good character directions

[49] During the cross-examination of the Justice of the Peace the following exchange took place:

> "Q: You know [the appellant] is a welder?
>
> A: Yes. He worked for me at home and at school. He is a good worker. He does farming on the side.
>
> Q: This is someone you trust?
>
> A: Yes."

[50] The learned Parish Court Judge did not make mention of this evidence from the Justice of the Peace in her reasons for judgment.

[51] She did however acknowledge what had been said in evidence by the appellant when she stated the following at paragraph 39 of her reasons:

> "Mr. Vidal's assertion that he is 61 years old and was never arrested before caused the court to consider his good character evidence in the context of whether he had the propensity to commit the crime and his credibility. However, the court is of the view that the prosecution proved beyond a reasonable doubt."

[52] This court has in several decisions considered and given comprehensive guidelines concerning the matter of good character directions (see **Michael Reid v R** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 113/2007, judgment delivered 3 April 2009, **Horace Kirby v R** ; **Sherwood Simpson v R** [2017] JMCA Crim 37 and **Joseph Mitchell v R** [2019] JMCA Crim 2). In **Horace Kirby v R**, Brooks JA notes three principles relative to good character directions in paragraphs [10] to [12], which may be summarized as follows:

1. A direction concerning the good character of an accused has two limbs, that of credibility and that of propensity.

2. Where an accused does not give sworn testimony or make any pre-trial statements or answers, which raise the issue of his good character, but raises the issue in an unsworn statement there is no duty to direct on credibility. There however needs to be a direction on propensity.

3. Where there is failure to fulfil a duty to direct the jury in respect of an accused's good character, an appellate court may nonetheless decide that it will not interfere with the verdict of guilty, if it is of the view that a good character direction would have made no difference to the verdict.

[53] The learned Parish Court Judge clearly took the good character of the appellant into consideration, based on what he had said, in the appropriate manner. She stated that she considered both limbs of the issue. There was no requirement for her to give a separation consideration based on what the Justice of the Peace had said. Accordingly, this ground too fails.

Conclusion

[54] On this analysis, there is no merit in any of the grounds advanced by the appellant. The result is that the appeal must therefore be dismissed and the conviction and sentence affirmed.