

IN THE COURT OF APPEAL

TURKS AND CAICOS ISLANDS

CR-AP 8/2017

BETWEEN



JAHMAL THOMPSON-MISSICK

APPELLANT

AND

REGINA

RESPONDENT

BEFORE: Sir Elliott Mottley, President

The Hon. Mr. Justice Adderley, Justice of Appeal

The Hon. Mr. Justice Hamel-Smith, Justice of Appeal (acting)

Appearances:

Lara Maroof for the Appellant

Leonard Franklyn for the Director of Public Prosecutions

Heard: 2nd September 2019

Delivered: 30th January 2020

Sir Elliott Mottley, P.

1. The Appellant was convicted on 1 May 2017 of one count of Burglary following a trial by jury before Justice Shuster. The particulars of the count were that on 11 July 2016, he and Paul Missick entered guestroom 4103 at Ocean Club East, Grace Bay as a trespasser and stole a quantity of jewellery valued at \$5,000.00 and a pack of birth control pills. The appellant had been jointly charged with Paul Missick.
2. The evidence in the case came solely from police officers including PC Innocent who gave evidence that in the early hours of Monday 11 July 2016, he and PC Missick responded to a 911 report made by two tourists, Shameka Watson and Tyshawn Corbett, who were staying at the Ocean Club East. PC Innocent stated that on arrival at Ocean Club East he saw two males lying on the ground. This turned out to be Tyshawn Corbett, the occupier of room 4103, and Paul Missick. A female who was standing close by was Shameka Watson, the partner of Corbett. Corbett told the officers that he had woken up to see two males running out of his room. He ran after them and caught one of them, Paul Missick. Officer Innocent gave evidence that he cautioned Paul Missick who stated:

“that was not me that was Jamal. He was driving a pink car and I know where he is staying.”
3. After his arrest, Paul Missick was taken to a house in Leeward Palms. Shameka Watson also went to the house. A pink Nissan March was parked by the house. PC Innocent stated that he spoke to the owner of the house Mitzie Missick, who gave permission for the vehicle to be searched. The officer saw a prescription box with the name “Shameka Watson” on the back passenger seat. The vehicle was seized for investigation purposes. The appellant was searched but nothing was found. Paul Missick was then arrested and taken to the police station where he gave a caution statement; in his interview under caution he denied the offences and did not implicate Jahmal Thompson-Missick.
4. The appellant was arrested on 12 July 2016. He was interviewed under caution. He stated that he lived in Leeward Palms with his mother Mitzy Missik. He accepted at

question 14 of the interview that he is permitted to drive his mother's pink Nissan March but this was "only when I get pay every Friday." In response to questions concerning the allegation, he gave no response other than denying that he was present at Ocean Club East on 10 July 2016.

5. In ground 1, it was alleged that the judge erred in refusing the submission of no case to answer on the part of the appellant. Counsel for the appellant had submitted that the appellant had no case to answer. The judge refused the application to withdraw the case from the jury and provided his reasons.
6. It was argued that the judge erred in rejecting submission of case. The only relevant and admissible evidence against the appellant at that stage was:
 - (i) Shortly after the burglary of Room 4103 at Ocean Club East, a pack of prescription pills belonging- to Shameka Watson was found in the back seat of a pink Nissan March parked outside the home of Mitzy Missick.
 - (ii) The appellant stated in his interview that he lived with his mother, Mitzy Missick and sometime drove her car, a pink Nissan March, on Fridays when he got paid
7. Counsel for the appellant submitted that this evidence was insufficient to found a case for the defendant to answer. He continued that in order to have established a *prima facie* case, the prosecution would have needed to adduce some evidence to establish that the appellant had been the driver of the pink Nissan March in the early hours of 11 July 2017, soon after the burglary took place. There was no such evidence. The statement alleged to have been made by Paul Missick to the officers at the scene was clearly inadmissible against the appellant. Further, Paul Missick did not adopt that statement as part of his case at trial. There was no other evidence implicating the appellant in the offence. It is submitted that taking the Crown's case at its highest, there simply was no case to answer against the appellant and the judge erred by failing to withdraw the case from the jury.

8. The prosecution's case in relation to the appellant was based on the out of court statement made by Paul Missick:

"that was not me that was Jamal. He was driving a pink car and I know where he is staying."

This statement was not made in the presence of the appellant.

9. The prosecution sought to rely on the statement testimonially, that is to prove the content of the statement. It was being used to show that the other man who went to the condo was the appellant. In addition, the prosecution was seeking to establish that he was the driver of the car in which the prescription was found shortly after the burglary of the condo. The finding of the prescription would have been circumstantial evidence to connect someone who had been in the car with the burglary which had taken place shortly before the finding of the prescription.
10. Unfortunately, the statement was not admissible to prove the identity of the driver of the vehicle; it certainly could not be used to prove that the appellant knew the driver of the car.
11. In view of the accepting of this submission it is not necessary to deal with the second ground of appeal.
12. It was for these reasons that the Court allowed the appeal, quash the conviction and set aside the judgment.



Sir Elliott Mottley, P

Adderley, JA

Hamel-Smith, JA (Ag.)