



**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS
BETWEEN:**

**CR-APM NO. 1/2020
APPEAL FROM INFO NO. 351/2018**

WINSTON GRANT

APPELLANT

v.

REGINA

RESPONDENT

DECISION ON APPEAL

Before: The Hon. Mr. Justice Carlos W. Simons OBE QC

Appearances: Mr Keith James of James Law Chambers for the Appellant.

Deputy Director, Dr. Angela Brooks for the Department of
Public Prosecutions for the Respondent.

Hearing Date: 20 December 2021

Venue: Court No. 5, Graceway Plaza, Providenciales

Date to be Delivered: 12 noon on Tuesday, 10 May 2022



The Appeal

1. The Appellant was a Sergeant in the Royal Turks and Caicos Islands Police Force. He was convicted before Her Honor Chief Magistrate Lobban-Jackson (as she then was) on 16 January 2020 of Count of Theft. On 24 March 2020 the Appellant was sentenced to six months in prison suspended for two years. He now appeals against that conviction and, if his appeal is allowed, the sentence of course falls away.
2. In addition to hearing Counsels' oral submissions at the hearing of the appeal, and reviewing my notes of same, I have read the skeleton argument of Counsel for the Appellant and the Crown's response to that. I have also reacquainted myself with the statute and case law authorities Counsel refer to and rely on. I have also reviewed the documents in the record of appeal comprising *inter alia*, the notes of evidence and the Judgment of the learned Chief Magistrate.

Brief Facts

3. The Crown's case at trial was that on 20 December 2017 Myraquel Cruz had lunch with her husband at the Graceway Gourmet Supermarket in Grace Bay. She was employed at the Seven Stars Resort, virtually across the street. Upon returning to work she realized she did not have her purse and suspected she may have lost it at the Supermarket. She returned and searched the area where she had had lunch and the parking lot in the area where her vehicle had been parked. She did not find it.
4. The following day, she reported the matter to the Grace Bay Police Station via a 911 call and Police investigations began. As to the contents of the purse, Mrs. Cruz told the Police that in addition to credit and identification cards she had more than \$2,000.00 in cash in the purse. This was in the main, money that had been reimbursed to her by a Mr. Jorge Hall, a friend and workmate whom she had allowed to use her credit card to purchase car parts.
5. One PC Murray who was involved in the investigations, upon reviewing the Supermarket's CCTV camera footage identified a green van that looked like one he knew to be owned by the Appellant. The van was parked next to the parking space that Mrs. Cruz had used. Someone exited the van and picked up something, then re-entered the van and drove off.
6. PC Murray called the Appellant and asked him if he had been at the Graceway Gourmet Supermarket the day before and if so, had he found a purse in the parking lot. The Appellant confirmed that he had been there and that he had found a purse containing various credit and identification cards but no money. It is not clear whether the "no money" statement was volunteered or asserted in response to a question. In any event PC Murray asked the Appellant to bring the purse to the Police Station which he agreed to do.
7. The Appellant however failed to take the purse to the Police Station for the next nine days, giving various excuses as to why notwithstanding repeated requests to do so and notwithstanding that the Grace Bay Police Station was where he worked. The Police eventually went to the Appellants home to retrieve the purse.

Charge, Conviction and Sentence

8. On these facts, the Appellant was charged with One Count of Theft Contrary to Section 3 (1) of the Theft Ordinance (Cap. 3.10). It is not necessary to recite the particulars of the charge here, except to say that those included the cards and the money mentioned at Paragraph 3 above, the sum of money being described as “cash exceeding US\$2,000.00 but not exceeding \$3,000.00”.
9. Also, on the evidence of the Prosecution witnessed that the learned Chief Magistrate considered sufficiently proved these facts the Appellant was convicted and sentenced. As was his right, the Appellant did not give evidence at the trial and neither did he call any witnesses. This Court is now asked to weigh whether based on the grounds of appeal advanced on behalf of the Appellant, that conviction and sentence should be allowed to stand.

Grounds of Appeal, the Crown’s Responses and Assessments

10. The first ground of appeal is that the conviction “cannot be supported having regard to the totality of the evidence.” In support of this ground of appeal Mr. James for the Appellant says that at the trial the Complainant said that when it was lost, she had in her wallet, in addition to the cards, “cash amounting to about \$3,000.00 more or less.” This sum comprised \$2,100.00 or so that she had been reimbursed by Mr. Hall, plus other funds she said she had had in her purse at the time.
11. However, Mr. James draws attention to that part of Mr. Hall’s evidence where Mr. Hall says that sometime after 2 January 2018 whilst at work, upon noticing the Complainant open her purse he asked her if she still had the money that he had repaid her, and she replied in the affirmative. He then asked her why she had not taken it to the bank, and she replied to the effect that she had been too busy at work all during the holidays. Mr. James makes the point that this completely undercut the Prosecution’s case as to there being money in the purse and if so, how much.
12. In response to this point, the learned Prosecutor, The Deputy Director of Public Prosecutions Dr. Angela Brooks, takes the confession and avoidance approach – she concedes that Mr. Hall gave such evidence, but she attributes this to his being confused. And she says that having heard Mr. Hall give his evidence it was for the Court to assess whether he understood the questions put to him and the veracity of his answers.
13. According to the transcript before me, the learned Chief Magistrate dealt with the matter, not in her Judgment as Dr. Brooks indicates at Paragraph 6 of her response, but in an exchange with Mr. James after the judgment had been pronounced. She said this: “And I do recall that Mr. Hall was going in circles in cross-examination. But I don’t recall him being in circles in relation to those; (the payments) that he gave her, which dates he gave her and how much he gave her.” (p. 20, lines 21 to 25).
14. But with respect to both the learned Chief Magistrate and to Dr. Brooks, I do not believe that was the point Mr. James was making, or in any case the point that needs to be made and I understand the evidence. It seems to me that Mr. James’ concern was directed, not to the

payments that Mr. Hall made and the dates he made them, but to that portion of Mr. Hall's evidence where he said that sometime after 2 January when he saw Mrs. Cruz open her purse at work, he asked her if she still had the money, he had given her, and she said she did. He asked her why she had not taken it to the bank, and she responded that she had been too busy at work all during the holidays.

15. My assessment is that Mr. James was right to call attention to this chink in the armor of the Prosecution as clearly if true, it ran counter to the case being advanced that Mrs. Cruz had that money in her purse when she lost the purse on 20 December 2017. It undercuts the Prosecution's case and the charge in an irreparable way and casts doubt on the veracity of the version of events advanced by Mrs. Cruz and it has not been answered in any satisfactory way. In my judgment it renders the conviction unsafe and unsatisfactory, and I therefore allow this ground of appeal for that reason.
16. Mr. James also advances a subsidiary ground of appeal under this head. He says that in response to PC Murray's initial phone call, the Defendant confirmed immediately that he had been at the IGA Gourmet Supermarket on the day in question and had indeed found Mrs. Cruz's purse. Such forthrightness, Mr. James suggests militates against the dishonest appropriation and intent to permanently deprive that are necessary ingredients of the offence of theft. I feel obliged to say that I agree with this assessment and for that reason as well I will allow the appeal.
17. The second ground of appeal is that the learned Chief Magistrate failed to have any or any sufficient regard to the inconsistencies in the Crown's case. In support of this ground Mr. James notes that Mr. Cruz did not mention money being in her purse when she initially reported the matter to the Police. It was only when the Police responded to the report that she mentioned money and at that time she said she had \$2,000.00. This was repeated in three witness statements, and it was only at the trial in her evidence that she mentioned \$3,000.00. Given these inconsistencies the Prosecution felt compelled to seek an amendment to the particulars of the charge to read that Mrs. Cruz had cash exceeding \$2,000.00 but not exceeding \$3000.00 in a matter that had commenced on the basis that the purse contained \$2,000.00 when it was lost.
18. Mr. James also identifies as the "high-water mark" of the inconsistencies in the Prosecution's case, the discrepancy between Mrs. Cruse's contention that the money Mr. Hall gave her was in her purse when it was lost and the evidence of Mr. Hall that she had indicated to him in January that she still had the money he had repaid her.
19. Mr. James relies on *R. v. Amado Taylor* (2000) 2 Cr App R 189 and *Karl Roberts v. R* [2019] JMCA Crim. 2019 to say that there is nothing in the written decision of the learned Chief Magistrate to indicate that she had had a mind to these inconsistencies when she came to assess the evidence in the case and how she dealt with them. He says that the apparent failure to do so amounted to a material irregularity that deprived the Appellant of a fair trial.
20. In her response, Dr. Brooks dealt with both grounds one and two together. In relation to this ground two specifically there does not appear to be any direct reply that I can discern over

her Paragraphs 8 to 16. I also do not see any note of the learned Chief Magistrate in her Judgment expressly directing herself to the inconsistencies of which Mr. James complains and how she had resolved them. Again, therefore I hold with Mr. James that the Defendant might well have been deprived of a fair trial, and that applying the standard of instructions to a jury, the conviction is unsafe and unsatisfactory, and it should not stand.

21. The third ground of appeal is that the learned Chief Magistrate failed to have any or any sufficient regard to the case put by the defence during the trial. In this regard Mr. James relies on the case of *R. v. Bower* [1995] Crim LR 746 (CA (Crim Div.)) as authority for the proposition that putting the defence fairly and adequately to the jury is the over-riding rule when summing up and this cannot be done without referring to the evidence when the defence has sought to exploit inconsistencies in the Prosecution Witnesses' accounts. And he goes on to criticize the Judgment of the learned Chief Magistrate for its lack of such indications.
22. The problem the Appellant faces on this ground of appeal is that he chose, as was his right, not to give evidence and not to call witnesses. So, the absence of any discussion of the Appellant's case at trial may well be because for those reasons it would only have been apparent from Counsel's cross-examination of Prosecution Witnesses. Having reviewed the Judgment I am of the view that the learned Chief Magistrate did the best that could have been expected in the circumstances and on its own therefore this ground of appeal cannot succeed.
23. Finally, the Appellant advances as his fourth ground of appeal the contention that his Constitutional Rights Under Section 6 (1) of the Constitution to a fair hearing within a reasonable time had been violated and that his Constitutional Rights Under 6 (12) of the Constitution to have his conviction reviewed by a higher Court had been violated. These violations, he says were wrought by the delays in the trial, delivery of Judgment, and sentencing. These delays "diminished the potency of the evidence especially the points made by the defence through cross examination of witnesses for the Crown."
24. I disagree with this assessment by Mr. James, and for the reasons given by Dr. Brooks at Paragraphs 20 and 21 of her response, I reject it.

Discussion

25. There is no question, but that Appellant did a very silly thing and behaved very strangely in not turning in the purse at the earliest opportunity, either straight away to the authorities at the Graceway IGA Gourmet Supermarket, or to the Police Station as he promised and where he was based. That is what any responsible Police Officer would have done and what would have been expected of any responsible citizen.
26. The delay in surrendering the purse and the necessity for the Police to have to attend at the Appellant's house to collect it reflects very badly on the Appellant and, by association, on his employers the Royal Turks and Caicos Islands Police Force as an institution. It might well have been a career ending infraction of their internal rules.
27. But doing silly things and behaving in strange ways do not necessarily amount to theft, which the legislature has taken great care to define, no doubt in part because of the stigma that

attaches. In my judgment, it is not clear on the evidence that the elements of dishonesty and intention to permanently deprive were satisfied to the standard of beyond reasonable doubt so that a tribunal of fact could be sure of the Appellant's guilt.

Decision

28. In the circumstances and for the reasons given at Paragraphs 16 and 20 above I allow the appeal and I quash the conviction and sentence.

The Hon. Mr. Justice Carlos W. Simons OBE QC
Judge of the Supreme Court
10 May 2022

