

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO 16/2009

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MRS JUSTICE McINTOSH JA
THE HON MR JUSTICE BROOKS JA**

ALLECIA CODNER v R

Miss Audrey Clarke for the appellant

Miss Paula Llewellyn QC Director of Public Prosecutions and Mrs Tracy-Ann Robinson for the Crown

4, 8, 15 March and 31 May 2013

BROOKS JA

[1] On 15 March 2013, after considering arguments in respect of Miss Allecia Codner's appeal, we made the following orders:

- a. appeal dismissed;
- b. convictions and sentences are affirmed;

At that time we promised to put our reasons in writing at a later date. These are our reasons.

[2] Miss Codner was convicted on indictment in the Resident Magistrate's Court for the Corporate Area on 15 June 2007 for the offences of larceny and fraudulent conversion. The victim of the offences was her father Mr Owen Keith

Codner. On sentence, the presiding resident magistrate, Her Honour Miss Lorraine Smith, fined Miss Codner \$100,000.00 or 12 months imprisonment in respect of the larceny count. In respect of the fraudulent conversion Miss Codner was sentenced to 12 months imprisonment at hard labour but the sentence was suspended for two years.

[3] Miss Codner has appealed against both the convictions and sentence. The first ground of her appeal in essence is that the evidence adduced by the prosecution did not satisfy the standard of proof in criminal cases and the learned Resident Magistrate erred in finding otherwise. The second ground is that the inconsistencies in the evidence rendered the prosecution's case unreliable and the third ground is that the learned Resident Magistrate's findings of fact were not consistent with the weight of the evidence.

The evidence

[4] The evidence adduced by the prosecution at the trial, which was accepted by the learned Resident Magistrate, concerned events which occurred on 1 July 2005. Mr Codner and Miss Codner lived in the same house. Although there were tenants in other sections of the building, no one else shared that accommodation. That morning, they had an argument. He left the house thereafter, leaving her there. When he returned at about mid-day that day, he saw that \$150,000.00 cash and his bank books were missing from his room and Miss Codner's room had been ransacked. Some of her clothes were also missing. There was no sign of any forced entry into the building.

[5] He went straightway to the Building Society, where they had a joint account, in order to report the loss of the bank books. Based on the information that he received there, he made a report to the police. Miss Codner was eventually arrested and charged for three offences, namely, stealing \$150,000.00 from her father's room (count one on the indictment); fraudulently converting to her own use, the sum of \$30,000.00 belonging to her father (count two); and fraudulently converting \$140,426.00, which belonged to Mr Loxley Wright, who was one of her father's associates (count three).

[6] At the trial, Mr Codner testified as to a system of accounting that he had established with Miss Codner since she was a child. He had trained her to be a manager of money and there was a meticulous system in place whereby she was required to make a record of all income and expenditure for all household matters. An important part of his testimony shows the setting of their financial relationship. At pages three to four of the record, his evidence was, in part:

"...Alicia knows my business. Everything I collect I give it to her. The money was to be lodged to an account. The account was in Alicia's name. My wife [sic] name is also on the account but my wife is not supposed to sign it.

I told Alicia that she is now going to be in charge of Mr Loxley's money. I bought her a ledger book when she is to look about my money and she is to record every cent that I give her. She was to post it to the ledger and keep it at home until we were ready to go to the bank. The bank was Victoria Mutual Building Society. Whenever we are going to the bank both of us would debit it from the ledger, [sic] take it to the bank. When it reached a certain amount we would transfer it to CD leaving Mr. Loxley's money in the saving [sic] account. The account is the same VMBS account."

[7] His testimony, as to the system used by them, was supported by receipt books and a ledger which were admitted into evidence. In the ledger were pages that were headed "Re Rental of House for Mr Locksley Wright 21 Winding Trail (Independence City)". Other pages were headed "Cash a/c Keith Codner". There were also others which were variously headed. Some of the headings were, "Sean Smith Re 21 Winding Trail" and "Rental Ms. Rosemarie Nevins 19 Stephenson Avenue". A detailed list is unnecessary for these purposes. The ledger comprises hundreds of pages of entries, spanning several years. All relevant entries were in Miss Codner's handwriting.

[8] In respect of the relevant monies, Mr Codner testified that on the day in question, he had left the \$150,000.00 cash in a bag with two bank books in his night table drawer. When he returned to the house later that day, the drawer was open and the bag and its contents were missing.

[9] His evidence concerning count two on the indictment was that, based on money that he had given to her, supported by her entry in the ledger, she should have had \$40,000.00 in cash. At his request she gave him \$1,000.00 and he told her that the balance should be used to meet bills for utilities. She, however, did not utilise the money for those purposes. In cross-examination, he was taxed on the fact that he had reported to the police that he had given her \$30,000.00 to keep. His answer is recorded at page 20 of the record:

“It was \$39,000.00. When I told the police it was \$39,000.00 they said it was ok. She had given me \$1,000.00 and she signed it in the ledger. Mr Stephenson [a police officer] wrote the statement. I read the statement and I signed it.”

There was no entry in the documentary evidence which supported this figure.

[10] The investigating officer, Detective Corporal Samuel Brown, testified that when he questioned Miss Codner, after administering a caution to her, she said that all the monies in the accounts with her name were hers.

[11] In her sworn testimony, Miss Codner said that she did not take the \$150,000.00 and that she was never given any money to keep for Mr Loxley Wright. Neither, she said, did her father give her any money to keep for him. She gave evidence of a bad relationship with her father. She said that she did use money (over six million dollars of an account with Victoria Mutual Building Society), to buy and furnish a house, but that that was her money and not her father's. She said that she accumulated that money from various sources, including money that her father had given to her. She testified that although she was a student she was employed in a work and study programme. She earned \$5,000.00 from it per week. She was not, however, otherwise employed. She would earn \$4,500.00 per week from a summer job.

[12] Miss Codner testified that when she was leaving the house that day, she locked up and left the key in the usual spot. She said that her father's girlfriend had access to the house, as did some boarders who occupied a portion of the house on the lower floor.

The learned Resident Magistrate's findings

[13] The learned Resident Magistrate carried out a thorough examination of the evidence. She found that the main issue was the credibility of the witnesses. In respect of the larceny of the \$150,000.00 the learned Resident Magistrate found that Miss Codner was the only person who, apart from Mr Codner, had access to his room and that Miss Codner was the only person at the house when he left that morning. The learned Resident Magistrate then stated her finding, at pages 55-56 of the record:

"This Court is satisfied that the defendant knew that this money was in her father's room along with the bankbooks. I find that having had a verbal altercation with her father she made a decision to leave his house and to remove the money that she knew he had from his room. I therefore find the defendant guilty on Count 1."

[14] On count two, the learned Resident Magistrate referred to the discrepancy between the \$39,000.00 and the \$30,000.00 in Mr Codner's testimony and found that there was no documentary evidence to support Mr Codner's evidence. As a result, she felt "unsure that the sum of \$39,000.00 was entrusted to the defendant specifically for the payment of bills as alleged". She therefore found Miss Codner not guilty on that count.

[15] There was, however, documentary evidence in respect of Mr Wright's money. The learned Resident Magistrate perused the evidence concerning the dealings with Mr Wright, for whom Mr Codner collected rent, and found that Miss

Codner knew all about the relationship and the transactions. She found that Miss Codner had signed the majority "of the diary [sic] entries between January 2001 and July 2005 as well as the receipts". In that regard the learned Resident Magistrate rejected Miss Codner's testimony denying knowledge of the monies for Mr Wright. The relevant part of the reasoning is set out at pages 59-60 of the record:

"The defendant struck this Court as quite an astute young lady and therefore it would be surprising that she was content to merely have her signature on these crucial documents evidencing receipt of monies yet have no knowledge of what became of the monies particularly in the context of the relationship that she had with her father."

[16] The learned Resident Magistrate accepted Mr Codner's evidence of the system of treating with Mr Wright's monies. She accepted that the money in the account had not been handed over to either Mr Wright or Mr Codner and therefore concluded, at pages 60-61, as follows:

"...I am satisfied and feel sure that the remaining balance of \$140,426.00 entered in the ledger and signed by the defendant as rent collected on behalf of Mr Loxley Wright has not been handed over to him by her and has been converted to the [sic] own use and benefit of the defendant or some other person. In the circumstances I find the defendant guilty on Count 3 of the indictment."

The analysis

[17] It cannot be disputed that the main issue which faced the learned Resident Magistrate was the credibility of the Crown's witnesses, especially Mr Codner. The grounds of appeal as formulated and Miss Clarke's submissions

speak exclusively to the issue of the evidence adduced at the trial. We accept the submission of the learned Director of Public Prosecutions, Miss Llewellyn QC, that the learned Resident Magistrate demonstrated that she was conscious of the relevant law and the issues and that she applied the relevant principles correctly and in a balanced manner.

[18] For these reasons we, respectfully, disagree with Miss Clarke that there was anything inconsistent in the findings between counts two and three of the indictment. The learned Resident Magistrate set out quite carefully and cogently the reason for her reticence concerning the evidence on the former. There can be no dispute with her approach. This court will not overturn the findings of a tribunal of fact unless those findings are so against the weight of the evidence as to be “obviously and palpably wrong” (see **Joseph Lao v R** (1973) 12 JLR 1238). There was ample evidence to support the findings in the instant case.

[19] The evidence concerning the \$150,000.00 was a clear question of fact and the learned Resident Magistrate was entitled to accept Mr Codner’s evidence of the presence of the money when he was leaving home and its absence when he returned. She was also entitled to draw from the circumstances of:

- a. the money having been taken;
- b. there being no sign of forced entry;
- c. Miss Codner having left the house during his absence;
- d. she having gone to the Victoria Mutual Building Society and withdrawn over six million dollars from the Certificate of Deposit held in the names of both Codners; and

e. her answers to the police,
that Miss Codner had taken the money.

[20] The learned Resident Magistrate also had ample documentary evidence by which to find that Mr Codner's evidence, in respect of the dealings with Mr Wright, was supported and credible. Her judgment was well reasoned. She reminded herself of the appropriate burden and standard of proof for criminal prosecutions and after rejecting Miss Codner's testimony, she went back to examine the evidence led by the prosecution.

[21] The learned Resident Magistrate specifically considered the evidence concerning the money in the accounts and found that there was not a sufficient co-relation between the ledger and the accounts "from which the inescapable inference can be drawn that the amount in the account was definitely from the rent money collected" (page 60). Nonetheless, she found that Miss Codner had received the monies and had not handed them over to either Mr Wright or Mr Codner.

[22] Based on the above analysis we find that the convictions should stand.

Conclusion

[23] The issue to be resolved by the learned Resident Magistrate turned on the credibility of the witnesses that she saw and heard. The evidence, both oral and documentary, that was placed before her was sufficient to establish that the

offences had been committed. As the tribunal of fact, her findings could not be said to be obviously and palpably wrong. In fact, they were, in our view, well reasoned and we find no reason to disagree with them. The convictions and sentences should not be disturbed.

[24] It is for those reasons that we ruled in the manner set out at the paragraph [1] above.