

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CRIMINAL APPEAL NO. 21/97

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A.

ALBERT GRANT vs. THE QUEEN

Appellant unrepresented

Kent Pantry, O.C., Senior Deputy Director of Public Prosecutions,
and Miss Marlene Malahoo for the Crown

November 25, 26, 1997 and April 27, 1998

BINGHAM, J.A.:

The appellant was tried and convicted in the Resident Magistrate's Court for the corporate area at Half Way Tree before Her Honour Mrs. Almarie Haynes, a resident magistrate.

He was charged on an indictment containing six counts, viz.:

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| Counts 1 and 2 | - Forgery |
| Counts 3 and 4 | - Uttering |
| Counts 5 and 6 | - Obtaining money on a forged document. |

He was convicted on counts 3-6 and found not guilty on counts 1 and 2 and was sentenced to *serve* concurrent terms of imprisonment of nine months at hard labour on each of the four counts.

It is against these convictions that he appealed to this court. Having heard the arguments in the matter, we dismissed the appeal, affirmed the convictions and sentences imposed by the learned resident magistrate. We promised at the time of handing down our decision to put our reasons into writing and this we now do.

The appellant was at the time of the incident in January 1993 the manager of the Policy Administration Department at Island Life Insurance Company.

Cecile Brown, a policy-holder with the company, had a number of insurance policies including two investment policies. Such policies have, in addition to the life coverage, an investment portfolio whereby the policy-holder upon payment of premiums over time is enabled to draw amounts from the investment fund based upon the total sums accrued to his credit on the policy.

On 22nd January, 1993, two cheques were drawn by the company in the name of Cecile Brown for \$15,000 each. The appellant was responsible for approving and vetting the payment vouchers. This was done without Miss Brown's authority as she had made no request for these funds. She was in fact, at the time that the transaction was carried out, absent from the country.

The evidence adduced by the Crown before the learned resident magistrate revealed a well-planned and orchestrated scheme involving the appellant and other persons in the Policy Administration Department to defraud the company by gaining access to policy-holders' accounts in the investment fund and using it for their own purposes.

In this particular case, by writing "Replacement cheque" on the requisition forms for the cheques to be issued in the name of Cecile Brown, the appellant well knew that the persons in the Investment Department responsible for preparing and issuing the cheques would be deceived into believing that the necessary preliminary checks verifying the genuineness of the request by the policy-holder for the funds had been done by the persons in the Policy Administration Department.

To prove the charges to the required standard, all that the prosecution needed to establish, therefore, was that the appellant, with the full knowledge of the fraud being perpetrated, either alone or along with others, caused the two cheques for \$15,000 each to be issued, tendered at the bank and money obtained upon the forged cheques. The fact that he did not physically carry out the act of preparing and issuing the cheques or attending at the bank to negotiate them, was of no moment. Provided it was shown that with the requisite guilty knowledge he caused these acts to take place that was sufficient.

The appellant in his defence had denied attending at the Mutual Security Bank branch at Knutsford Boulevard on 27th January, 1993. He operated a savings account at this branch. It was into this account that the two cheques were lodged on the day in question.

Valerie Anderson, a teller at the bank, testified to seeing the appellant at the bank that day and attending to him. She knew him very well as they both had attended a management course at the Institute of Management and Production in 1990. This course lasted for two years during which time she was accustomed to seeing him four to five times per week. At the bank it was she who attended to him on most occasions when he came there to transact business. Despite her

marked familiarity with the appellant, the learned resident magistrate was less than impressed with her as a witness and rejected her evidence with regard to the events of 27th January, 1993, as lacking in credibility.

In his defence, the appellant admitted that he wrote up the lodgement slip (Exhibit 2) on the date in question and that his account was credited with the proceeds of the two cheques issued in the name of Cecile Brown for \$15,000 each and purported to be signed by her.

While admitting that the two cheques which had his account number placed on the back of them upon lodgment to his account as being credited to his account with his knowledge and consent, he nevertheless sought to deny any knowledge of the details as to how the lodgement was written up. The appellant sought to give an account of being asked by a co-worker, one Drummond, to allow him permission to lodge a foreign cheque to his account on the day in question. As the two cheques credited to the account, however, were for an amount of \$15,000 (Jamaican) each, whereas any foreign cheque lodged to the account would be credited based on the daily going rate of exchange, this would have cast grave doubt upon the credibility of the appellant as to his veracity in this regard.

The appellant in his sworn evidence at his trial testified to having written up the deposit slip himself. In that regard he could hardly deny knowledge on his part that the two cheques drawn on the company account in favour of Cecile Brown for \$15,000 were part of the lodgement. This evidence was at variance with his earlier account to the police in the "Questions and Answers" administered to him (part of Exhibit 4) (question #32) that Drummond had informed him that he had deposited

two cheques to his account and had asked him to withdraw the money and give to him (Drummond).

The appellant's attempt to cover up this knowledge on his part about the cheques could be seen as evidence tending to establish his complicity in the fraudulent scheme being practiced by himself and others on their employers.

In the light of this evidence, the learned resident magistrate found that the appellant's complicity in the fraudulent scheme was established upon proof of the documentary evidence which pointed solely in the direction of the appellant as in this regard:

1. It was the appellant who initiated the issuing of the two cheques in the name of Cecile Brown as being "replacement cheques". This procedure meant that such cheques were issued in place of cheques originally issued but treated as lost or mislaid. The careful checks which the system called for in the case of an original request from a policy holder for the funds would not necessarily be adhered to in such a case.
2. The appellant himself had put into operation a requirement for all cheques over \$10,000 being issued from his department to be vetted by him. This practice was put into operation as a result of the fraudulent activity taking place in that department.
3. The appellant had stated that the deposit was made to his account at Mutual Security Bank, Knutsford Boulevard on 27th January, 1993, by one Mr. Drummond, a supervisor in **the** department. He said that Drummond had lodged the two cheques to his account without his prior knowledge. The deposit slip (Exhibit 2), when examined, contradicted this account as it was the appellant's sworn testimony that he personally wrote up the deposit slip. The total amount credited to the account was made up of five cheques, including the two cheques drawn in the name of Cecile Brown, totalling \$30,000.

4. The appellant in his evidence also admitted approving the payment voucher for the preparation of the two cheques. In doing so he needed to be satisfied that the documentary proof was in place. To the contrary, the necessary requirement was not in place as:
- (i) there was no written request by the policy-holder for the funds;
 - (ii) the original uncashed cheques which would previously have been issued were not accounted for.

In her findings of fact the learned resident magistrate also made this critical finding, viz.:

"I find that the accused had full knowledge of the origin of the cheques. That is that they came from Cecile Brown's account. Even though I cannot rely upon the evidence of Valerie Anderson when she said he entered the Bank and consequently gave the accused the benefit of the doubt, I nevertheless find that whoever entered the Bank and tendered the cheques for lodgments to this account did so in complicity with the Accused or as his agent."

Given the circumstances on which this finding is based, the conclusion reached inexorably followed. In the light of the observations made by the learned resident magistrate, however, the appellant, in our view, could consider himself as extremely fortunate in not being convicted on the two counts of forgery. It was the foregoing reasons that resulted in the conclusion reached at the commencement of this judgment.