

JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO: 41/92

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

R. v. DELROY MYRIE

Merrick McKoy for Appellant

Miss Carlene Reid for Crown

11th January 1992

FORTE, J.A.

The appellant was convicted in the Resident Magistrate's Court for the parish of Westmoreland sitting in Savanna-la-mar on the 2nd day of October 1992, for an offence under section 4 (1) (a) of the Tourist Board Prescribed Areas Regulation 1985. Particulars of the offence charged was that on the 5th of February 1992, he within the jurisdiction of the Court unlawfully did offer his services as a money changer without a licence in a public place to wit Negril Beach in the parish of Westmoreland, the said area being designated a prescribed area.

The facts upon which the prosecution relied was disclosed by Asst. Superintendent of Police Charles Scarlett, who testified that on that day at about 9.00 o'clock in the morning, he was on observation on the Negril Beach in the vicinity of Country Cottage Restaurant at the Tree House Club. He then observed a young man on the beach who intercepted tourists offering to change money for them. The man approached a male tourist, told him he could get money changed for him. He took from the tourist a United States Dollar and went across the road to the Country Cottage premises where he spoke to the appellant Delroy Myrie and asked

him to change some money for him. The evidence is that the appellant was at that time standing beside a red Lada motor car. The Assistant Superintendent who had followed the men, testified that the appellant was about to change the money, when, he (the Asst. Supt.) was apparently seen, by the man who had offered to change the money. The man then ran and was pursued by the superintendent without success. He then returned to where the appellant was still standing beside his van. He identified himself as a police officer to Myrie and told him that he was going to charge him for offering services under the Regulation referred to heretofore.

In the result, Myrie was searched and in the car was found a calculator, \$10,555 Jamaican vis-a-vis U.S. Dollars. When he was cautioned, the appellant said "Officer, me a do nothing?" He was taken to the Negril Police Station and formally charged. The evidence given by the Superintendent was supported by Constable Franklyn Hunter who was on observation with him. In his defence the defendant denied the charge. He said he was there to take a tourist who had asked him to transport him to the Airport. He was doing so in the line of his duty as taxi driver. He testified that his car was operated as a taxi. He admitted that the money was found on him, but explained that that was money he had on him to spend in Montego Bay where he was going to buy a set of sports rims for his car.

Before us Mr. Derrick McKoy for the appellant, among other things contended that the evidence was not sufficient to prove that the appellant offered services as is contended for in the Regulation. With this submission we agree. The evidence falls very short of proof. There is, for instance, no evidence that the appellant did offer his service. The evidence reveals that he was merely standing by when this young man asked him to change the money. There is no evidence to support the inference drawn by the

Superintendent. Infact the Superintendent says that he was about to change the money. There is no evidence to suggest that he was really in the act of changing the money for the young man. In the event the conviction is not supported by the evidence. The appeal is allowed, the conviction is quashed and the sentence is set aside.