

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 28/90

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN J.A.

REGINA

VS.

CECIL RICHARDS

Appellant appeared in person

Miss Marcia Hughes for Crown

June 12, 1990

ROWE P.:

The appellant Cecil Richards was convicted by His Honour the Resident Magistrate for Kingston on the 9th of March, 1990 for Larceny of a motor vehicle and he was sentenced to serve twelve months imprisonment at hard labour.

One ground of appeal filed on his behalf challenged the conviction on the ground that it was unreasonable having regard to the evidence.

The appellant has appeared in person and has restated his position that he bought the vehicle and that although he cannot say that it was not stolen, he was not the thief.

The case presented for the prosecution at trial and which the learned Resident Magistrate accepted as being true was that on the 24th of July, 1989, a man calling himself "Denzil Brown" went to premises on Constant Spring Road where Mr. Collin Cooke has a business place and enquired about a Datsun pick-up which was on the premises with a "For Sale" sign on it.

Mr. Cooke, his Engineer, and another of his employees all identified the appellant as the man who presented himself on the 24th July as "Denzil Brown." The enquiry on the 24th didn't go beyond the exploratory stage. The man whom the prosecution witnesses say is the appellant was told that there was a price of \$75,000.00 for the pick-up and there the matter rested. However, the next morning on the 25th when Mr. Cooke got to his office the appellant was already there. He requested an opportunity to test drive the vehicle. Permission was granted. In the company of Mr. Cooke the appellant drove the vehicle for many miles and eventually stopped at a bank on Hagley Park Road to arrange finance. When they returned to the premises Mr. Cooke left the vehicle on the premises at Constant Spring Road, as also the appellant. On Mr. Cooke's return he discovered that the appellant and one of his employees had driven the vehicle to certain assessors to have the vehicle assessed, presumably to satisfy the bank which the appellant said wanted a valuation before approving a loan.

That same day another of Mr. Cooke's employees decided to drive the van to the airport and the appellant asked to be given a lift to Harbour View. When that officer reached Harbour View the appellant changed his story and travelled along with the driver to the airport. He enquired of the driver, at the

airport, how long he would be staying and when he was told ten to fifteen minutes, the appellant parted from him and that was the last that the driver saw of him until he saw the appellant in Court. After about fifteen minutes the driver returned to where the vehicle had been parked and it was found to be missing.

The prosecution rested upon identifying the appellant as "Denzil Brown" who came to Mr. Cooke on the 24th and on the 25th of July and this they did to the satisfaction of the learned Resident Magistrate.

Two of the prosecution witnesses had ample opportunity to identify the appellant as they had been in his company for hours while he tested the vehicle and while he discussed the price of this van and the terms of payment.

Three weeks after the vehicle was stolen it was recovered. By that time it was painted red but on examination the white paint showed up underneath quite clearly. Mr. Cooke was able to positively identify the vehicle from a series of marks. He described them as:

- (a) the special rims on the two front wheels;
- (b) the sports steering wheel which was a very small wheel;
- (c) a hole in the roof where the UHF antenna had been;
- (d) a broken dome light;
- (e) missing tail lights to the back;
- (f) the dash board had been damaged;
- (g) the speedometer reading was only about 1,000 miles more than it had been when the vehicle was stolen from him;
- (h) the white paint visible under the red paint;
- (i) a tail gate latch which had been damaged just the day before.

Most significantly, when the forensic expert tested the chassis number he discovered that although it had been tampered with the original number could be easily discernible and that it coincided exactly with the chassis number of the vehicle which belonged to Mr. Cooke. Consequently the identification of the vehicle was complete. What was left was the identification of the person "Denzil Brown".

The appellant said that he bought the vehicle three days after Mr. Cooke said that it was stolen from him. He said that he bought it on the 26th of July and that it was exactly in the same condition as it was when it was taken from him by the police. He said that he bought it from a man called James Ingram of 7 Main Street, May Pen. However, when the police made a check in those premises nobody by the name of James Ingram was found or was known in that area.

The learned Resident Magistrate in his findings of fact rejected the defence. He said that he found the prosecution's case against the appellant proved beyond all reasonable doubt. He said that the Datsun pick-up was proved to belong to Mr. Cooke and/or Creamy Corner which Mr. Cooke controlled. He referred to the fact that the vehicle was undoubtedly found in the possession of the appellant and he said that he found that no person named James Ingram did in fact sell the vehicle to the appellant and that no such person did business at 7 Main Street, May Pen.

The Court, he said, accepted the evidence of the witnesses Cooke, Williams and Edwards that this accused was the man who represented himself as "Denzil Brown" and offered to buy the said pick-up.

We think that there was ample evidence before the learned Resident Magistrate on which he could come to these findings of fact and therefore his decision to convict this appellant is unassailable.

The appeal against conviction and against sentence will therefore be dismissed. The sentence will begin to run from the 23rd of April, 1990.