

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 17/2010

**BEFORE: THE HON. MR JUSTICE PANTON P
THE HON. MRS JUSTICE HARRIS JA
THE HON. MR JUSTICE MORRISON JA**

CRAIG WALTERS v R

Leroy Equiano for the appellant

Jeremy Taylor and Brodrick Smith for the Crown

13 January and 15 April 2011

MORRISON JA

[1] On 1 May 2008, the appellant was convicted by Her Honour, Miss Judith Pusey, Senior Resident Magistrate for the Corporate Area, of the offence of fraudulent conversion and was sentenced to 12 months imprisonment at hard labour. On 13 January 2011, we heard and allowed his appeal, quashed the conviction, set aside the sentence and entered a judgment and verdict of acquittal. These are the reasons for that decision.

[2] The appellant was indicted for the offence of fraudulent conversion, contrary to section 24(1)(iii)(a) of the Larceny Act. The particulars were that he, being entrusted by Nicola Isaacs with money in order that he might pay the said money for a 1996

Honda Integra motor car in respect of the said Nicola Isaacs, fraudulently converted the said money to his own use and benefit or to the use and benefit of some other person. The appellant pleaded not guilty to this charge.

[3] The facts of the case for the prosecution can be briefly stated. The appellant and the complainant were lovers. She resided in New York in the United States of America and he in Jamaica and they met in or around August 2006, while the complainant was on a visit to Jamaica with her family. After her return to New York, they remained in touch by telephone and e-mail correspondence, during the course of which they began to discuss the acquisition of a motor car. It was the appellant who asked her, the complainant testified, whether she "would be interested in purchasing the car for use on [her] vacation and for him to use while [she was] not in the country". On a subsequent visit by the complainant to Jamaica in November 2006, it was agreed that the car, which the appellant had already identified, would be purchased on the terms discussed. The appellant told the complainant that the cost of the car was \$650,000.00 and she agreed that she "would purchase the car through him". To this end, the complainant gave the appellant US\$500.00 "to hold on to" and, during this visit, she also placed the appellant's name on her savings account at the National Commercial Bank (NCB), "to facilitate the car purchase". The bank pass book for this account was also left in the appellant's custody.

[4] The complainant returned home to New York in December 2006 and thereafter she commenced sending money to the appellant, in varying amounts and by various means, towards the purchase of the car, which was being paid for in instalments. In total, she sent him in excess of US\$10,000.00 for that purpose (in addition to moneys sent for other purposes). At some point in the first half of 2007, the appellant told the complainant in a telephone conversation that the vendor of the car was prepared to give him a discount on the price "if he came up with about J\$75,000.00" and, as a result of this conversation, the complainant authorised the appellant to withdraw this amount from the NCB account. On 29 May 2007, the appellant withdrew the sum of \$101,000.00 from the said account and it was common ground that the final payment towards the purchase of the car was made out of this withdrawal. By this date, the car had already been in the appellant's possession for some time and, indeed, on a visit to Jamaica in March 2007, the complainant said that she had been transported by the appellant "to and from for all my purposes where ever I wanted to go".

[5] In due course, title to the motor car was taken by the appellant in his sole name, which, the complainant told the court, "was the arrangement I had with [the appellant]". The complainant explained that the reason for this arrangement, whereby the car would be hers, but licensed in the appellant's name, was "because I do not have a Jamaican driver's licence and could not do the legal paper work I was told". The car was therefore licensed in the appellant's name with her full knowledge and consent.

[6] Sometime in 2007, the relationship between the complainant and the appellant soured. On 9 November 2007, the complainant made a report to the police and on 4 December 2007 the appellant was arrested and charged with the offence of fraudulent conversion. Upon being informed of the report the complainant had made to the police (and cautioned), the appellant's response was, "a lie she a tell a give she give me di money" and, after he was formally arrested and charged (and again cautioned), he repeated that "a give she give mi di money fi buy de car fi myself". On 18 January 2008, the complainant and the appellant had a discussion, during the course of which, she said, she "pleaded with him for us to come to some agreement to not take this case any further and for me to be partially reimbursed US\$5,000.00". The appellant's response to this proposal was that he had no money and that she should do whatever she wanted to do.

[7] In his defence, the appellant denied that the complainant had sent him any money towards the purchase price of the car. His evidence was that the complainant had assisted him in arranging a "business marriage" to a friend of hers, who also resided in the United States, and that the sum of "around US\$3,000", which he admitted receiving from the complainant was "to pay for the hotel, marriage situation etc, and for us to move around etc". The complainant had done this, the appellant testified, so that he would be able to go "and stay in America with her". As regards the sum of \$101,000.00 withdrawn from the NCB account, the appellant testified that he had withdrawn this amount after notifying the complainant of his intention to do so and that he had told her that he "was going to buy some car rims and tyres" out of this

money. He had also given her sister "a portion of the money" and paid "some weekly partner to her grand aunt on her behalf". He denied receiving any further funds from the complainant and insisted that he had purchased the car from his own funds. He also denied that there had been any arrangement for him to purchase a car for the complainant on her behalf. He had a title to the car in his own name, which the complainant knew and had never contested. According to the appellant, the complainant's disaffection with him stemmed from his refusal to end his relationship with a lady he described as "my girlfriend", as a result of which the complainant had told him that "she would 'F' him up."

[8] On this evidence, the learned Resident Magistrate found the appellant guilty of fraudulent conversion, as charged. She accepted the complainant as a truthful witness, finding her demeanour "compelling", while she rejected the appellant's evidence, concluding that the complainant "purchased the car in [the appellant's] name by arrangement but was the lawful owner of it and that the prosecution had proved its case beyond reasonable doubt".

[9] The appellant filed the following grounds of appeal:

- "1. The evidence adduced at the trial does not support the learned Resident Magistrate [sic] findings.
2. The Learned Resident Magistrate erred in law, by allowing the case to continue after the Crown's case.
3. In all the circumstances the sentence of the court was manifestly excessive".

[10] Taking grounds one and two together, Mr Equiano submitted that, in order to prove fraudulent conversion, it was incumbent upon the Crown to prove that there was a conversion by the appellant and that it was done dishonestly. The Crown had failed to prove either of these ingredients, Mr Equiano submitted, and the appellant ought not therefore to have been called upon to answer the charge or, ultimately, to have been convicted. As regards ground three, Mr Equiano submitted that the sentence of 12 months imprisonment was manifestly excessive.

[11] Mr Taylor for the Crown declined, quite properly, in our view, to support the conviction in this case. Section 24(1)(iii)(a) of the Larceny Act, under which the appellant was charged, provides as follows:

- "24.-** (1) Every person who –
- (i) ...
 - (ii) ...
 - (iii) (a) being entrusted either solely or jointly with any other person with any property in order that he may retain safe custody or apply, pay, or deliver, for any purpose or to any person, the property or any part thereof; or
 - (b) having either solely or jointly with any other person received any property for or on account of any other person,
- fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof,

shall be guilty of a misdemeanor, and on conviction thereof liable to imprisonment with hard labour for any term not exceeding seven years.”

[12] The section involves two factual elements, the entrustment to the accused of the property of another for a certain purpose or purposes and the fraudulent conversion by him of that property to his own use or benefit or to the use or benefit of some other person. On the Crown’s case, which the Resident Magistrate accepted, the property entrusted to the appellant consisted of the funds necessary to complete the purchase of the 1996 Honda Integra motor car and the purpose for which these funds were entrusted to the appellant was to purchase the said car for the complainant “in his name”. Also on the Crown’s case, the clear and unchallenged evidence was that title to the car was indeed taken in the appellant’s name, in full compliance with the purpose for which he was entrusted with the complainant’s money. In these circumstances, it seems to us that it is plain that the allegation of a conversion, far less a fraudulent conversion, by the appellant of the complainant’s money has not been made good. If what the complainant now wishes to do is to use the fact that she contributed all or most of the purchase price of the car as leverage, either to secure a contribution from the appellant to the price of the car or to have the car transferred into her name, these are clearly matters to be resolved in the civil, rather than the criminal, court.

[13] These are therefore the reasons for our decision on 13 January 2011 to allow this appeal, with the consequences stated at para. [1] of this judgment.