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JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 27/98

COR: THE HON. MR. JUSTICE RATTRAY, P.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE LANGRIN, J.A. (Ag)

R vs KENNETH WILLIAMS

Messrs. Lancelot Clarke and Eme Usim for the Appellant
Carrington Mahoney, Deputy D.P.P.(Ag) and Deneve Barnett for the Respondent

30th November, December 1, 1998 and 1st March, 1999

LANGRIN, J.A. (Ag).

This is an application for leave to appeal from a conviction of receiving stolen property in the Resident Magistrate's Court on March 9, 1998.

The Crown's case rests substantially upon the doctrine of recent possession. In support of this the complainant Hector Robinson, a businessman gave evidence that his house at 19 Donald Boulevard was burnt on the 17th March, 1997 and among items missing from the house was a Daewoo video, he had purchased at Courts Store, May Pen three years ago.

Two days after the burning of his house he visited 'Courts', May Pen and was given the serial numbers by the Assistant Manager.

On Thursday, March 20, 1997 about 6:45 p.m. he attended at the May Pen Police Station where he saw the accused, Detective Cpl. Elliott and a Daewoo

video. He looked at the serial numbers on the video and compared it with the numbers given to him by the Assistant Manager and found the numbers to be the same.

The accused said, "It wasn't me tief it". Under cross-examination he couldn't recall the brand name or the year he purchased the video. On or before the 17th March, 1997 he did not make a mental record of appliances in his house and he never recorded the serial numbers of the appliances in his house. He had seen the serial number he received from Courts on the day he purchased the video. When he went to Courts to check for the serial numbers he was shown documents by the Manager who wrote off the serial numbers and gave them to him. He never had the paper with him.

Detective Corporal Lindy Elliott gave evidence that he visited the complainant's house on the 17th March, 1997 and saw the burnt shell of the Robinson's residence. On the same day he visited premises at 9 Donald Boulevard, May Pen and in the presence of the accused observed a black plastic bag on a bed in a room. Accused said he didn't know anything about it, he took accused to May Pen Police Station and placed him in custody.

On Thursday 20th March, 1997 the complainant identified the Daewoo video in the presence of accused by the serial numbers which he had. Accused said, "Ah nuh me steel it".

Robert McIntosh, the cousin of accused testified for the Crown that he shares the occupancy of the room with accused and on the 17th March, 1997

about 7:00 p.m. he saw the accused come home with two bags, one of which was black and he placed them on a bed in the room. An electrical cord was hanging out of one of the bags. Sometime later he saw Detective Corporal Elliott coming out of the house with accused.

The defendant testified in his defence stating that he repairs appliances. Up to 17th March, 1997, he has been living at 9 Donald Boulevard, May Pen and sometimes carried out his trade there. He had several appliances for repairs in his room. He knew one Johnny who lived in the area and on the 17th March, 1997 Johnny gave him a black bag with a VCR in it. He never looked at the VCR at the time but took it home on the instructions of Johnny who said he would come and talk to him about it later. Later the same evening the Police came to his house and took the bag off his bed.

Learned counsel for the appellant argued one ground of appeal as follows:

"The learned Resident Magistrate erred in finding that the subject of the charge, a Daewoo VCR machine was stolen, as there was no nexus between the said VCR exhibited in court and the one missing from the complainants house; there being no identification of the VCR in court by the complainant as the said VCR was neither shown to the complainant or any special identifiable mark or number admitted in evidence to establish the ownership thereof."

He submitted that there was no evidence of identification of the video in court. In cases where the Crown relies on the doctrine of recent possession there must be identification in court and not out of court, particularly where item is

the causal link between accused and the commission of the crime. He cited the following cases in support of his submissions *R v Homer Williams*

[1969] 11 JLR 185; *R v Brown* [1964] 6 WIR 369; *R v Gordon* [1969] 11 JLR 433.

It is clear from the evidence that no attempt was made to identify the video by appearance or general mark to link it to the exhibit in court. Consequently there was no nexus between the video stolen from the complainant's home and the one in court. At the same time the court will have to bear in mind the occupation of the accused as an appliance repairman and ensure that great care is taken in identifying the exhibit.

Although the serial numbers were received from the Manager of Courts it must be shown that these numbers were authentic. In order to do so it must be shown that the document from which the numbers came was prepared by or generated under the direction of the party who compared the numbers on the video with that in the document.

There is no proof that the numbers emanate from the document prepared by the person who it is alleged to be the author.

If the document is characterised as a business record it is important to ensure that the precise requirements of the applicable statutory requirements are met.

Section 31F of the Evidence (Amendment Act) 1995 renders admissible, documents created in the course of a business, trade or profession from information supplied by a person with personal knowledge of the matters dealt

with and received in the course of a trade, business etc. In criminal proceedings the evidence is only admissible if it is proved to the satisfaction of the court that the person who supplied the information is dead, unfit to attend, outside of Jamaica, cannot be found or identified after all reasonable steps or cannot reasonably be expected having regard to lapse of time since he supplied the information to have any recollection of the matters dealt with in the document.

In the instant case the Assistant Manager of Courts did not give evidence nor was the document admitted in evidence.

Mr. Mahoney, learned counsel for the respondent argued that the complainant was only refreshing his memory from the document because he had seen the serial numbers before. We cannot accept that argument in light of the fact that the complainant had said he had not made a mental note of the numbers he had received. On the other hand he would be refreshing his memory from an inadmissible document.

In our judgment there was no positive identification of the articles in court with the articles stolen from the complainant's house. Accordingly, we have come to the conclusion that the Crown's evidence of identification was inadmissible.

In the circumstances, we would allow the appeal and set aside the conviction and sentence.