

SAINT VINCENT

-IN THE COURT OF APPEAL-

Criminal Appeal No. 5 of 1974.

BETWEEN:

PAUL WILLIAMS                      APPELLANT  
vs  
THE QUEEN                              RESPONDENT

Before: The Honourable the Chief Justice (Ag.)  
The Honourable Mr. Justice St. Bernard  
The Honourable Mr. Justice Peterkin (Ag.)

Dr. K. John for Appellant  
M. Joseph, Crown Counsel for Respondent

January 20, 1975

JUDGMENT

The Judgment of the Court was delivered by-

ST. BERNARD J.A.

The appellant was convicted of breaking and entering the Queen's Warehouse and stealing therefrom cigarettes to the value of \$3,957.50. He was convicted and sentenced to imprisonment for a term of three years on the 4th October, 1974. He has appealed against that conviction on five grounds. Before this Court Counsel for the appellant asked leave that the five original

grounds be withdrawn and that four new grounds of appeal be substituted therefor. Of these grounds I will deal only with two, that is, ground 1 and ground 4. These are as follows:-

(1) That the learned trial judge erred in law by suggesting matters as being corroborative which in fact were not;

(4) That there was not a sufficient identification of the articles.

Before dealing with these grounds of appeal I will deal shortly with the facts of the case. Between the 4th and 5th days of March, 1974, the Queen's Warehouse was broken into and a quantity of 555 and Benson & Hedges cigarettes were stolen. According to the witness George Browne the cigarettes were marked "M.M." and the Custom's Officer Bailey, said that the outer cases of the Benson and Hedges cigarettes were marked "HDD & Co." and the actual packets were marked "HM". The 555 cigarettes were marked "Clarke and KR".

Sometime in March 1974, one Claude Bobb stated that he bought 4 large cartons of 555 cigarettes from the appellant and asked him where he got them from and he said on board a steamer.

The next witness Aubrey Clifton, who is a salesman and keeps a shop also stated that he bought a quantity of 555 cigarettes from appellant and he paid \$250.00 for them.

He said he bought these cigarettes in August 1974. In August 1974, the appellant was in custody on remand for this same charge. A fact which stands out is that although both witness who bought cigarettes said the cigarettes they bought were 555 yet the cigarettes found at Clifton were 555 and Benson & Hedges cigarettes. The Benson & Hedges carried the mark as those that were at the Customs Warehouse. The circumstances under which these two witnesses stated they bought cigarettes from the appellant and when one considers the quantity they bought, put them on inquiry. There was evidence on which both these witnesses could have been found to have been accomplices. The jury should have been so told and the fact left to them to say whether or not they were accomplices. It is on the evidence of these two witnesses alone that the appellant was convicted. He was not found in possession of any cigarettes.

In regard to ground one Counsel argued that on page 27 of the record the trial judge told the jury --

"as far as corroboration, which I told you earlier that you must look for in regard to the evidence of Aubrey Clifton, the evidence of the man Claude Browne, (it should be "Bobb") that the accused did have the cigarettes in his possession can be said to amount to corroboration, but it will be for you to say if it does."

Counsel submitted to this Court that that statement was a grave misdirection on the part of the judge because the

the evidence clearly shows that Claude Bobb could have been considered or should have been considered as an accomplice also just as much as Clifton, and they should have been so told by the judge. In our opinion there is merit in this submission. The trial judge should have directed the jury that Bobb could have been considered as an accomplice and the rule is, one accomplice cannot corroborate another accomplice and therefore the evidence of Bobb was incapable of corroborating the evidence of Clifton. That misdirection alone is fatal to the conviction of the appellant.

Counsel then argued ground 4, that is, the identification of the goods was inadequate. Counsel for the respondent conceded that the identification did not seem adequate as there were two types of cigarettes and both witnesses said that they bought only 555 cigarettes from the appellant although Benson and Hedges cigarettes were found at Clifton's premises. This being so it was the duty of the Judge, especially in the case where the Prosecution rests solely on the doctrine of recent possession, to tell the jury that the articles in Court must be the identical articles which were stolen and they must first come to that conclusion before they can convict. That was not told to the jury and in the opinion of this Court for the reasons stated the conviction in this case cannot stand, and must be quashed. The appeal is allowed and the conviction and sentence set aside.

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E. L. ST. BERNARD  
Justice of Appeal

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P. CECIL LEITCH  
ACTING CHIEF JUSTICE (AG)

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H. R. PETERKIN  
Justice of Appeal (AG)