GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 9 of 1976

BETWEEN: ROY PETERS Appellant

Vs.

THE QUEEN Respondent

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: Mr. Squires for Appellant
Mr. E.John for Respondent

1977 January, 25

J U D G M E N T

DAVIS, C.J. delivered the Judgment of the Court:

This is an appeal against conviction and sentence by leave of a single judge. The appellant was tried on an indictment containing three counts. The first for house-breaking for the purpose of executing a felony to wit stealing. The second count was for stealing from a dwelling house one mattress and two pillows the property of John George, and the third count was for receiving the said articles knowing the same to have been stolen.

After a trial lasting two days the jury found the appellant guilty on the first and second counts and were discharged from returning a verdict on the third count. He was sentenced on the first count to four years imprisonment and on the second to three years imprisonment both sentences to run concurrently.

/He.....

He complains against his conviction on the following grounds.

(1) that the verdict of the jury should be set aside as being unreasonable and cannot be supported having regard to the evidence and (2) that the indictment is bad on the face of it in that it laid the offences as having been committed between Friday the 12th and Saturday the 13th March, which discloses no existing date or dates. The third ground of appeal is against sentence and that ground has been abandoned.

The case for the crown is to be found in the testimony of John George, Pamela Collier and Peter Williams and that case is this. On the 12th March, 1976, John George closed up his dwelling house at Soubise in the parish of St. Andrews, and in that house he left a mattress and two pillows on his bed. I suppose there must have been other furniture in the house. He said that he secured his house properly and that when he returned on the 13th, at one time he said 13th and then he corrected himself to 14th, but when he returned he found his mattress and two pillows missing. He went upstairs and noticed that the window which was made of wood leading to the bed room was slammed in but that the bolt was bent and it appeared to him that it was forced. He made a report to the police and on the morning of the 22nd March, between 5.30 and 6.00 a.m. he accompanied the police to the home of the accused. The police knocked at the door of the house of the accused got no answer and left. The man George remained nearby in the field and while

/there.....

there he said he saw the accused and his woman, Pamela removing a mattress from the kitchen.

It appears that he then got in touch with the police who returned, and the police witness said that he saw Pamela and George with the mattress and upon seeing him they both ran. On the 22nd March, the appellant was arrested and charged with the offences to which I have alluded.

Now, in his defence the appellant made a statement from the dock. As there seems to be some misunderstanding as to the value of such a statement let me say at once that a statement made from the dock has never been considered to be evidence. It could never be taken to prove anything which has not been proved before. It is material in the case which the jury must consider as by so doing it may throw a different light upon the case for the prosecution. That is the value of a statement. But in that statement as I understand it, the appellant is saying that the mattress and the two pillows belonged to him because he bought them from a man named Joseph Roberts, that he bought the mattress and pillows along with two chairs and a stove and that he paid a total sum of $95. I think his statement went a bit beyond that because he is saying that on this day when you said you saw me running away I was elsewhere, I went fishing, so we have him saying two things (1) that the articles belonged to him and (2) it is not true that I ran away when I saw the police van because I wasn't at home and it was my woman, Pamela who told me about this raid, and that she even said that she was arrested.

/Now.....

Now, tha was the state of the evidence except for what Pamela said. Her evidence is interesting because she said that she lived with the appellant at some time prior to the 12th March, but at the time he had no mattress, he had a bed, he had no mattress. I don't know, she said she left him, I don't know whether she left him because he had no mattress but she left him and strangely enough that she returned to live with him when he got the mattress, because she is saying that she went back and this was soon after the 12th. She went back and she found him with the mattress and pillows which she hadn't seen before. So that is the evidence which the jury had before it.

Now Counsel for the appellant argued ground two first and his submission on that is to the effect that the indictment should state that on a date unknown between let us say the 12th of March and some distant date, but it must begin with the words "a date unknown", and his reason for making that submission is that the law doesn't take notice of a fraction of a day. He cited a passage from Archbold in support of that contention but as I read the passage it says:-

> "where the exact date is not known the time should be stated as being on a day unknown between stated dates not merely as between those dates."

Now I take that to mean this, that if you don't know the exact date then you must begin by saying on a day unknown, between the 1st of such and such a month and the 15th of such and such a month, but where as in this case we know that the crime must have been committed between a certain hour on one

/day.....

day and another hour on the following day then it seems to us to be in order to give the dates as shown in the indictment. As I told the learned Attorney-General the indictment could have been improved by stating that the offences took place between the hour of such and such a day and the hour on the following day but I can see nothing wrong with the indictment as it stands. I am supported by the case which was cited by the Attorney-General where that indictment stated that between sunset on the 8th of March and sunrise on the 9th of March that a certain offence was committed. But in spite of that the learned counsel for the appellant says that this indictment is bad. Now quite apart from whether the submission is right or wrong another question arises as to whether this point is properly before the court. As I understand the law any objection to an indictment must be taken at the first opportunity preferably before pleading, and if one fails to take the point then I agree with learned counsel for the appellant that it could be taken in arrest of judgment, but if it is not taken at all before the trial judge, if there is nothing on the record to indicate that this point has been taken it is our view that, it is not open to counsel to argue this point before the Court of Appeal.

I go now to ground one that the verdict of the jury should be set aside as being unreasonable and cannot be supported having regard to the evidence. Now this ground must stand or fall by the evidence in the case and looking at the evidence which has been adduced in this case, I would say there was

/ample.....

ample evidence, ample evidence upon which the jury could return the verdict which they returned.

Now where the Crown relies for conviction on charges of this nature, house-breaking and larceny, where the Crown relies for conviction purely upon evidence of the possession of goods which have recently been stolen, that quite apart from proving the fact of possession there must be proof, strict proof of identification of the goods. That is to say, before an accused can be called upon to give an explanation for his possession the crown has to establish that the goods were properly and strictly identified by the person who is claiming them. In our view the articles were properly identified. The witness George gave evidence as to their description. He said where he got them, the person from whom he bought them, he gave the colour, and spoke about having them made by a seamstress. "The mattress looked tangerine, red in colour, it was dunlop, I had no mark on it. I bought it from one King Fighter for $110. The pillows were not one plain colour, the pillow was blue-green, it was not one colour but it looked to me like green. I bought the foam by the width and the sack by the yard and gave it to a seamstress to sew for me." So here was the identification of the articles by the man George.

As against that we have an explanation by the accused that he bought them from Roberts. Well, it's true that the prosecution has to prove its case beyond reasonable doubt but it is clear that the jury did not accept the explanation given by the

/appellant.....

appellant as to how he came into possession of the articles. It is equally clear that they believed the police witness who said that the appellant ran away when he saw the police van. It seems to me that Joseph Roberts might have been able to put the case beyond doubt. I don't know whether Joseph Roberts is a man unknown, but that is how the evidence stood.

No complaint has been made against the summing up by the learned trial judge and the jury having that evidence before them and exercising their minds properly and drawing the correct inferences were entitled to come to the verdict they did. In the result then this appeal is dismissed and the convictions and sentences are affirmed.

(Sir Maurice Davis)
CHIEF JUSTICE

(E.L. St. Bernard)
JUSTICE OF APPEAL

(N.A. Peterkin)
JUSTICE OF APPEAL