

COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.6 OF 2006

BETWEEN:

ANGUS WARRINGTON

Appellant

and

THE STATE

Respondent

Before:

The Hon. Mr. Denys Barrow, SC

Justice of Appeal

The Hon. Mr. Hugh A. Rawlins

Justice of Appeal

The Hon. Mrs. Dancia Penn-Sallah, QC

Justice of Appeal [Ag.]

Appearances:

Mrs. Dawn Yearwood-Stewart for the Appellant

Mr. Gene Pistena and Mr. Carette George, Crown Counsel, for the Respondent

2007: April 16;
September 17.

JUDGMENT

- [1] RAWLINS, J.A.: This is the judgment of the Court. The appellant, Warrington, was charged for the offences of burglary, theft and handling stolen goods. At the trial, counsel for the State withdrew the burglary and theft charges before he commenced his address to the jury. The hearing continued on the charge of handling. Warrington was convicted on this charge. He was sentenced to serve 7 years in prison. He appealed on 9 grounds, which will be set out and considered after the facts are briefly stated.

The brief facts

- [2] The case for the State was presented by the evidence of Maria Riviere, the virtual complainant, Lennel Benoit and by the investigating Acting Police Corporal Jeffrey James. That evidence stated that Maria Riviere secured and left her residence at Rose Street, Goodwill, on 24th December 2001 and stayed with her parents at Good Hope for the Christmas Season. Acting on a telephone call that she received, she returned to her home on 26th December 2001. On arrival, she found that her home had been broken into and ransacked. On checking, she realized that items of jewelry, an AIWA stereo set and a number of CDs, a cylinder of cooking gas and a pair of jeans were missing. She reported the matter to the police and Corporal James, who was detailed to investigate the matter, accompanied her to her home where he made a record of his observations.
- [3] Acting on information which he received some months later, in August 2002, Corporal James searched Warrington's resident at Stock Farm on a search warrant signed by the Commissioner of Police, which authorized the search for a shotgun. He found an AIWA stereo set which matched the description of that which Ms. Riviere said was missing from her home. The officer also found an audio cassette recorder and a speaker. Lennel Benoit, one Daniel Brumant and, Vernita Esprit, the mother of Warrington's children, were at Warrington's home at the time of the search, but Warrington was not there. The officer took the stereo set and other items into his custody.
- [4] On 12th January 2003 Corporal James met with Warrington at the Police Headquarters, and questioned him concerning the items which he found when he searched his (Warrington's) home. James' evidence was that Warrington told him then that Lennel and Daniel brought these items to his house. According to James, later that same day at the CID, in the presence of Warrington, Ms. Riviere identified the stereo set, by its serial number, as that which was missing from her

home. According to James, at the time, Warrington said that he had already told him (James) that the items were brought to his home by Lennel and Daniel.

- [5] Corporal James's further evidence was that on 20th August 2003, in the presence of Lennel, Daniel and their mothers (because the boys were minors at the time), he cautioned Warrington, asked him a number of questions and recorded those questions and Warrington's answers in his note-book. At that time Warrington denied that he knew Lennel and Daniel. In answer to the question whether Lennel and Daniel were the persons whom he had previously told James had brought the stereo set to his home, Warrington again denied that he knew them. He however said that he saw them around in the Stock Farm area, but not at his home there. In answer to the question whether he had seen them bring anything to his home, Warrington replied that he did not know. Corporal James arrested Warrington and charged him for the theft of the items from Ms. Riviere's home.
- [6] In his evidence Lennel insisted that he went with Daniel to Warrington's home and that Warrington was the person who opened the door and let them in when they arrived there. He also insisted that they did not take anything with them to the home and met the stereo set in the house.
- [7] Warrington gave no written statement to the police. In statements which James attributed to him, and which the officer recorded in his note-book, Warrington denied knowing that the stereo set was at his residence where the officer found it.
- [8] At his trial, Warrington gave an unsworn statement from the dock in his defence. In that statement he said that he owns 2 dwelling places: a house at his farm and his residence. He said that the police were searching for him and he told Vernita to take responsibility for his residence. She indicated to him that she had relatives who could occupy the house and she allowed them to do so. He denied that he knew either Lennel or Daniel until they were brought to the Police Station on 20th August 2003. He insisted that if the police found anything illegal at his residence,

he was not responsible for it because he would not have left such a thing there knowing that Vernita could thereby be in trouble with the law. He called no witness to give evidence on his behalf in his defence.

The grounds of appeal

[9] The grounds of appeal are stated as follows:

1. The learned Trial Judge erred in Law and misdirected herself when she failed to admonish the Prosecutor for the contents of his closing speech as it related to the Appellant's dock statement.
2. The learned Trial Judge erred in Law and misdirected herself when she failed to admonish the Prosecutor for the contents of his closing speech as it related to the contents of the Appellant's dock statement which had the effect of completely misleading the jury on the facts and forcing them to draw improper inferences.
3. The learned Trial Judge erred in law and misdirected herself when she omitted to mention to the Jury that it would be dangerous to convict on the uncorroborated evidence of the Prosecution witness Lennel Benoit.
4. There was a material irregularity at the trial when the learned Trial Judge admitted the Search Warrant used by the Police Officer to effect a search of the Appellant's premises.
5. There was material irregularity when the learned Trial Judge allowed evidence of a prejudicial nature to go to the Jury and even after this was done failed to direct the jury in her summation to disregard those prejudicial bits of evidence thereby depriving the Appellant of a fair chance of an acquittal.
6. The learned Trial Judge erred in law and misdirected herself when she told the Jury inter alia that "it was not necessary to prove that all of the items stolen were found in the accused possession... it was sufficient for the purposes of the handling charges if any one of the items stolen was found in the possession of the accused".
7. The decision was against the weight of the evidence as the prosecution has failed to prove to the jury that the Appellant had recently possessed the item, that he had come in possession of all the other items contained in the indictment or that he had knowledge that the item in his premises was there or that it was stolen and that he had handled it.
8. The learned Trial Judge erred in law and misdirected herself when she failed to guide the Jury on what in law is considered to be recent possession, the nature of the item stolen and the application of the law to the facts as they found it.
9. The learned Trial Judge should have ruled that there was no case to answer since the Prosecution did not present any evidence to support the

handling of all the other goods stolen from the home and should have called on the accused to answer only for the stereo set found in his home.

- [10] I shall first consider grounds 1 and 2 together because they attack aspects of the prosecutor's closing address to the jury. I shall then consider ground 3, which seeks to impeach the trial judge's summation to the jury on the basis that it did not contain a warning concerning corroboration relating to the evidence of Lennel Benoit. This will be followed by grounds 4 and 5, which will be taken together because they both raise the issue of the admission of allegedly prejudicial evidence at the trial. Grounds 6, 9 and 7 will next be considered together under the caption "no case" because they raise the question of the sufficiency of the evidence adduced by the prosecution. Finally, ground 8, which seeks to impeach aspects of the trial judge's summation relating to recent possession, will be considered.

Grounds 1 & 2: the prosecutor's closing speech

- [11] In *Patrick Lovelace v The Queen*,¹ I summarized the general principles, which provide the guidelines for closing addresses by prosecutors in criminal trials. I stated,² on the authority of *Mohammed v The State*³ and *Mantoor Ramdhanie and Others v The State*,⁴ that in the closing speech to the jury, a prosecutor should not venture into the province of impropriety or unfairness by asserting his or her own personal belief on any aspect of the evidence and thereupon urge the jury to believe that evidence also. A prosecutor should not use language that is vindictive or inflammatory against an accused and should not introduce inadmissible or irrelevant material that could colour the consideration of the evidence by the jury. I pointed out, however, that in *Alexander Benedetto v The Queen*⁵ the Privy Counsel accepted the view that was expressed by this Court

¹ St. Vincent and the Grenadines Criminal Appeal No. 33 of 2004 (9th October 2006).

² At paragraph 28 of the judgment.

³ [1999] 2 AC 111, at 125g and 126a.

⁴ [2005] UKPC 47.

⁵ [2003] UKPC 27.

that a prosecutor's closing speech is to be assessed in the context of the prosecutor's own environment, which permits the prosecutor to speak to the jury in language and a style that the jury understand. Their Lordships accepted that from this perspective there is nothing that prevents a prosecutor from delivering a robust closing speech.

[12] Mrs. Yearwood-Stewart complained that the learned prosecutor went beyond the boundary of propriety and fairness when he addressed the jury on the unsworn statement which Warrington gave from the dock.

[13] In his statement from the dock, Warrington said, among other things:⁶

"To my dear loyal Judge and Jury, as to what the witnesses and witness has said in connection with this matter, is not what transpired. The fact is, I am the owner of two dwelling places: One, a house on my farm and my dwelling place and, during the time the police was searching for me, I told my baby's mother she can take responsibility of my house. She responded by saying she has some relatives that could occupy the house, which she allowed. ... I only got to know Lennel and Daniel when they were brought to the C.I.D. ... My babies' mother did mention that she had some cousins using the house. I know nothing, absolutely nothing about the AIWA set and I do not know anything about where the AIWA set came from or who brought it there. ... [O]ne of the witnesses stated that he came to my house and I told him lock my gate; the police are looking for me. ... [I]f there was anything illegal at the house, at my house, my babies' mother was responsible of, I would not have left it there knowing that my children's mother, babies' mother, could get into trouble with the law." (Emphasis added)

[14] In his closing address, the prosecutor stated:⁷

"You have heard the Prosecution witnesses; you have had an opportunity to observe them; you have noticed how they responded to each of the questions; you were denied such an opportunity, Members of the Jury, as it relates to the accused. Yes, he has the right in law to remain in the defendant's dock and give an unsworn statement but if such strong allegation is made, Members of the Jury, you may want to consider why didn't he go in the witness box and give evidence where you will have the opportunity to ask him questions; where you will have the

⁶ At pages 197 and 198 of the Record of Appeal.

⁷ From page 203 line 3 – page 204 line 5 of the Record of appeal.

opportunity to determine the veracity of his evidence. He stayed right here, Members of the Jury and he said to you about, "My babies' mother had the responsibility to take care of the home," and I will come to that into more detail, Members of the Jury. You may want to consider why, why didn't he bring that baby mother to support him or to give evidence on his behalf."

[15] The prosecutor continued:⁸

"Members of the Jury, it is the Prosecution's case and I ask you, Members of the Jury, to find that the accused was dishonest. He lied to you that's why he could not present as his defence his babies' mother, his girlfriend to support him by giving evidence on his behalf in the witness box. He was dishonest to you, Members of the Jury. The Prosecution ask that you find that he was dishonest in the sense that he didn't come to give evidence in the witness box. He denied you of that opportunity just as he denied Miss Riviere of her Aiwa set when it was discovered by the police in his possession. You may want to consider, Members of the Jury, the reason why he didn't go in the witness box. Yes, in law, he has the right to stay there but as reasonable men and women of the world if someone has made a very serious accusation about you, you would want to defend yourself; you would want to be heard; you would want to give your side of the story; you would want to answer questions in relation to that. This was his opportunity, Members of the Jury that was the opportune time given to him. He denied you of such opportunity. You may want to take that into account and the Prosecution asks you to take such into account. There is an old saying, Members of the Jury, *'there is no s[m]oke without fire'*."

[16] The prosecutor then continued:⁹

"He says, ... *"My dear lawyer, if there was anything illegal at my house, my babies' mother was responsible."* He is shifting blame now, Members of the Jury. The Prosecution is asking you to find that he is now shifting blame. He owns the dwelling house. It is his responsibility, Members of the Jury, the Prosecution asks you to find that it was his responsibility, if he had noted or had noticed anything illegal taking place there, anything that did not belong to him, it was his responsibility to find out how it get there."

⁸ From page 204 line 6 – page 205 line 6 of the Record of appeal.

⁹ See page 215 of the Record of Appeal, from lines 5 to 15.

[17] The prosecutor concluded this aspect of his address, as follows:¹⁰

“That’s why, Members of the Jury, I ask you to find, also to find that this was also one of the reasons why he didn’t bring his baby girlfriend here in Court to testify on his behalf. You may want to consider that, Members of the Jury, why, and the Prosecution asks you to find that he is hiding the truth from you and do not believe him. Do not believe him, Members of the Jury, that anything illegal which took place there, it was his baby’s mother that was responsible, that’s a make-up story, Members of the Jury. It’s the Prosecution case that he has made up a story to you and if he was very honest, if it was not a make-up story, consider the fact that he would have gone to the witness box and give evidence where he would be questioned by you, Members of the Jury, because you are the Judges of facts; you want to know the truth of it. So the Prosecution asks you to infer the mere fact that he did not go in the witness box is because he is guilty of handling stolen goods. You can draw inference from that, Members of the Jury, the fact that he did not go into the witness box.”
(Emphasis added)

[18] In the Commonwealth of Dominica, the principle that when an accused person exercises the option to make an unsworn statement from the dock, it is improper for the prosecutor to comment on it adversely has been modified by the proviso to section 8(7) of the Constitution. This subsection states:

“8(7) A person who is tried for a criminal offence shall not be compelled to give evidence at the trial: PROVIDED that nothing in this subsection shall prevent the prosecution or the court from commenting on his failure to give evidence on his own behalf or prevent the court from drawing inferences from any such failure.”

Clearly, then, the address of the prosecutor to the jury is not impeachable to the extent that he commented on the fact that Warrington did not give sworn evidence on which he could be cross-examined.

[19] At first blush, I was inclined to think that the prosecutor may have overreached the provision of the proviso when he asked the jury to draw the inference that Warrington was dishonest because he did not give evidence and further asked the jury to infer that he was guilty of handling stolen goods from the mere fact that he

¹⁰ See from page 215 line 22 to page 216 line 271 of the Record of Appeal.

did not give evidence on oath. This was quite close to the line, in my view. However, I think that these statements were within the parameters of the proviso to the extent that, by them, the prosecutor was indicating to the jury, as judges of the facts, that these were possible inferences which they could have drawn from Warrington's failure to give evidence on oath.

[20] Mrs. Yearwood-Stewart complained that the prosecutor's address to the jury was prejudicial and unfair to Warrington because the prosecutor misquoted some of the words which Warrington said in his unsworn statement at the trial. She complained that whereas the prosecutor said that Warrington blamed Vernita for anything illegal that was found at his house, in his unsworn statement Warrington said that he would not have left anything illegal in his house which Vernita was responsible for because he knew that that would have put her in trouble. I agree that the prosecutor did not accurately state the exact words that Warrington used. However, in my view, it was the prosecutor's interpretation of the words, and an interpretation which was not far fetched in the context of the evidence given in the case. Warrington's case was, essentially, that if the stereo set was found at his residence he was not responsible for it being there because he left the house in the control of Vernita Esprit; and her 2 cousins were also there. In effect, he was asserting that they, and not him, would have been responsible for the stereo set.

[21] In my view, therefore, the comments of the prosecutor, of which Mrs. Yearwood-Stewart complained, do not amount to unfairness or to such prejudice against Warrington that would render his statements improper. In any event, the fact that the learned prosecutor subsequently reminded the jury that in the end they were the judges of the facts and that it was a matter for them to decide what facts to believe, in my view, obviated any prejudicial exhortation that may have been conveyed in the highlighted portions of his address to the jury. In the foregoing premises, I do not think that the prosecutor's closing speech went further than that which Alexander Benedetto and section 8(7) of the Constitution permit. I would therefore dismiss grounds 1 and 2 of the appeal.

Ground 3 - corroboration

- [22] Mrs. Yearwood-Stewart asked the court to note that the evidence of Lennel Benoit was very important to the prosecution's case. She insisted that since Lennel was at Warrington's home, at the time when Officer James conducted the search and found the stereo set and other items, while Warrington was not there, Lennel was an accomplice or at least a person who had an interest to serve. Mrs. Yearwood-Stewart submitted that, in the circumstances, the learned trial judge was required to warn the jury that it was dangerous to convict on Lennel's evidence and that they should be cautious in accepting or relying on it.
- [23] It is noteworthy that Mrs. Yearwood-Stewart relied on *R. v Prater*,¹¹ *R. v Redman*¹² and *R. v Braithwaite*.¹³ The principles relating to corroboration stated in these case have however been overtaken by statute in England and by statements of principle by the Privy Council. The result of these is that a judge is now under no general duty to warn the jury that it would be dangerous to convict on the evidence of an accomplice or of a child in sexual offences case.
- [24] I considered the principles which guide the present approach to corroboration in *Patrick Lovelace v The Queen*.¹⁴ I noted that in England statute¹⁵ has abrogated the obligatory requirement to warn the jury that it is dangerous to convict on the evidence of an accomplice. I noted, further, that *R v Makanjuola*¹⁶ confirmed that even under the statute, it is a matter of discretion whether a judge, in summing up, ought to urge caution with regard to particular witnesses, including accomplices, and that the Privy Council confirmed, in *R v Gilbert (Rennie)*¹⁷, that the approach

¹¹ [1960] 1 All E. R. 298.

¹² (1964) 8 WIR 119.

¹³ (1968) 11 WIR 458

¹⁴ *St. Vincent and the Grenadines Criminal Appeal No. 33 of 2004* (9th October 2006), at paragraphs 22-27 of the judgment.

¹⁵ Section 32(1) of the Criminal Justice and Public Order Act, 1994 (U.K.).

¹⁶ [1995] 1 WLR 1348. See pages 1351-1352 of the judgment.

¹⁷ (2002) 61 WIR 174, on appeal from this Court sitting for Grenada.

is the same for Commonwealth Caribbean jurisdictions even in the absence of statute. I also noted that in *Gilbert (Rennie)*, the Privy Council held that the rule that required a mandatory corroboration warning was only a rule of practice, which was to be re-assessed and reformulated in the light of further experience or research. Their lordships recommended the practice and guidance adumbrated by Lord Taylor, C.J. in *Makanjuola*.¹⁸

[25] I pointed out in *Patrick Lovelace* that the *Makanjuola* guidance states that the question whether to give a warning or a corroboration direction is within the discretion of the trial judge. If the judge determines that a warning or corroboration direction should be given, the judge should determine the strength and the terms of the warning. The strength and terms would depend upon the content and manner of the witness's evidence, the circumstances of the case and the issues raised. The trial judge may often consider that no warning is required. However, the judge should consider it necessary to urge caution where a witness is shown to be unreliable. In more extreme cases, for example, where a witness is shown to have lied or to have made previous false complaints, a strong warning may be appropriate. The judge may in such cases suggest that it would be wise to look for some corroborating evidence. I further pointed out that their lordships stated that there is no specific formulation to which the direction must conform and an appellate tribunal should be slow to interfere with the exercise of the trial judge's discretion, since that judge would have had the advantage of assessing the manner and content of the witness's evidence.

[26] Against this background, I would dismiss ground 3 of the appeal because Mrs. Yearwood-Stewart raised no ground in relation to the evidence of Lennel Benoit which, in my view, would move this court to impeach the failure of the trial judge to give a warning or corroboration direction.

¹⁸ At pages 1351-1352. See *Gilbert (Rennie)*, at page 185.

The admission of prejudicial evidence

- [27] Grounds 4 and 5 bring into issue the admission of the search warrant at the trial and the evidence which Corporal James gave from his note-book that Warrington told him that he (Warrington) was on the run and was not therefore aware that the stereo set was at his residence. Mrs. Yearwood-Stewart submitted that by admitting these into evidence the trial judge admitted evidence that was highly prejudicial to Warrington. She insisted that this rendered his trial unfair, particularly because the trial judge did not direct the jury to ignore those bits of evidence.
- [28] The general rule is that nothing should be given in evidence which does not directly tend to the proof or disproof of the matter in issue. The *locus classicus* for this is *Makin v Attorney General for New South Wales*.¹⁹ In *Makin*, Lord Herschell LC stated that it is not competent for the prosecution to adduce evidence tending to show that an accused is guilty of criminal acts other than those contained in the indictment, which would indicate that the accused is likely from his conduct or character to have committed the act for which he is charged.²⁰
- [29] In relation to ground 4, Mrs. Yearwood-Stewart submitted that the trial judge should not have admitted the search warrant into evidence because its prejudicial effect greatly outweighed its probative value. She insisted that admitting it had the effect of putting before the jury a document signed by the Commissioner of Police ordering the search of Warrington's house for a dangerous weapon. This, she said, could have caused the jury to impute bad character to Warrington, thinking that he was a terrible person who was on the run with guns and ammunition and that he therefore must have stolen or handled the items from the complainant's house. The law, Mrs. Yearwood-Stewart submitted, does not permit this unless an appellant puts his character at issue during the course of his trial.

¹⁹ [1894] AC 57.

²⁰ *Op. cit.*, at page 65.

[30] With respect, I do not agree with these submissions because they place great store on the possible imputation of bad character from the fact that a shotgun was the specified subject of the search of Warrington's house. I do not discern how the specifying of a gun as the subject of the search could have caused prejudice to Warrington unless the prosecution raised it to impute bad character to him during the course of the trial. I have seen no evidence in the Record that the prosecutor did so. Neither have I seen any reference to it by the judge in a manner that would have been prejudicial to Warrington. The idea that it could have been prejudicial apparently did not occur to defence counsel at the trial. The Record of the proceedings shows²¹ that defence counsel voiced no objection to the admission of the search warrant into evidence. He did not ask the trial judge to edit the warrant by deleting the reference to the shotgun.

[31] In relation to ground 5, Mrs. Yearwood-Stewart submitted that the trial judge should not have admitted the oral evidence which Corporal James gave that he obtained the warrant to search the Warrington's premises for "firearms and ammunition", when the warrant referred only to a 12 gauge shotgun. She said that the trial judge should have directed the jury to ignore this statement, as well as the statement which the officer made that when he questioned Warrington, the latter said that he was not at home because he was on the run. Instead, submitted Mrs. Yearwood-Stewart, the trial judge rendered these statements, which in her view were prejudicial, acceptable to the jury when in her summation²² the judge said that Warrington admitted that he was on the run.

[32] With respect, however, I do not think that the trial judge erred when she admitted Corporal James' oral evidence that Warrington told him that he was on the run in the context in which it was given. In my view the statement did not prejudice Warrington in his trial because he had himself said in his unsworn statement that

²¹ At page 141.

²² At page 272 line 7 of the Record of Appeal.

he could not have known that the stereo set was at his residence because he was on the run and therefore was not at home to know that the set was there. That was an integral part of Warrington's defence. Corporal James' oral evidence that Warrington had told him, during his investigation, that he was on the run supported this aspect of Warrington's defence.

[33] In the second place, I do not think that Corporal James' statement of the purpose for which he obtained the search warrant was not so inaccurate as to have been prejudicial to Warrington. The officer stated that he applied for and received the warrant to search for "firearm and ammunition". The warrant permitted him to search for a shotgun. James' evidence was only inaccurate to the extent that he added that the warrant authorized him to search for ammunition as well.

[34] In my view, therefore, neither of the allegations contained in grounds 4 and 5 of the appeal, taken separately or compendiously, amount to material prejudice such as would cause me to allow the appeal on these grounds. Accordingly, I would also dismiss grounds 4 and 5 of the appeal.

No case

[35] In effect, grounds 6, 7 and 9 question the sufficiency of the evidence on which Warrington was convicted. Warrington was charged for dishonestly receiving the stereo set; an LPG cylinder; four vessels of CDs; a pair of jeans pants; one pair of gold earrings and one gold chain.²³ These are the items which Ms. Riviere said were stolen from her home.

[36] In relation to ground 9, Mrs. Yearwood-Stewart submitted that since at the close of the prosecution's case it was clear that the prosecution had proved that Warrington may have handled only the stereo set, and not the other items charged, it was incumbent on the trial judge to indicate to the prosecutor that the

²³ See, at page 125 of the Record, the words of the amended handling charge that was read to Warrington.

only case the accused was required to answer was that of handling the stereo set and nothing else. As far as ground 6 is concerned, Mrs. Yearwood-Stewart submitted that the trial judge erred when in her summation she told the jury that it was sufficient for the purpose of the charge if any one item that was stolen was found in Warrington's possession.

[37] Ideally, when at the end of the case for the State the evidence only pointed to the possibility of the stereo set alone being in Warrington's possession, the prosecution should have sought leave to amend the charge to reflect this. The other items should have been deleted so that the amended charge would have been for handling the stereo set only. Warrington should then have been re-pleaded on the amended charge. However, the prosecution's failure to do this was not fatal to the conviction on the handling charge. The guilty verdict by the jury reflected their finding that Warrington had dishonestly handled the stereo set. They did not think that his explanation of the way in which the set came to be at his residence absolved him. Their finding was in accord with the statement by the trial judge in her summation that it was sufficient for the purpose of the charge if 1 missing item was found in Warrington's possession.

[38] In the foregoing premises, the failure by the prosecution to seek leave to amend the charge to reflect handling of the stereo set only does not provide a ground for allowing the appeal against Warrington's conviction. I think that this is supported by the reasoning in *Machent v Quinn*,²⁴ and provides the guidance that Mrs. Yearwood-Stewart requested this court to provide on this matter.

[39] *Machent v Quinn* was on appeal by way of case stated. The respondent was charged on an information with entering certain premises and stealing 35 shirts, 9 pairs of trousers, 4 sweaters, 2 beach sets and 2 cardigans, valued at about £200. The justices found that the prosecution proved that he had stolen the sweaters only, valued at £25. The justices then accepted submissions on behalf of the

²⁴ [1970] 2 All E. R. 255.

respondent to the effect that they could not convict him on the information because the prosecution had not proved all of the ingredients contained in the charge. In particular, it was submitted that there was no proof that the respondent had stolen the other items for which he was charged. In a short judgment which Lord Parker CJ delivered, it was held that the justices were entirely wrong. Lord Parker stated that it has always been accepted that the prosecution does not have to prove that all of the articles listed in an information or indictment were stolen in order to secure a conviction. It was sufficient, he stated, that there was proof that the respondent had stolen 1 item. He said that what was necessary in such a case was to have the conviction entered for stealing 4 sweaters valued at £25 and the sentence should then reflect this. In the result, the appellate court remitted the case to the justices directing them to enter a conviction against the respondent for the theft of the 4 sweaters valued at £25 and to impose the appropriate sentence.

[40] The foregoing reasons also put to rest 2 of the 3 allegations contained in ground 7 of the appeal. Those 2 allegations state that the verdict is against the weight of the evidence because the prosecution failed to prove that Warrington knew that the stereo set was at his residence or that it was stolen and he handled it. They also state that the prosecution failed to prove that the items in the charge were ever in Warrington's possession. It is my view that the prosecution presented sufficient evidence from which the jury could have found or inferred that Warrington knew that the stereo set was at his residence and that he should have or ought to have known that it was stolen.

[41] The third contention in ground 7 of the appeal is that the prosecution failed to prove that Warrington had "recent" possession of the stereo set. Since Mrs. Yearwood-Stewart's submissions on this aspect of ground 7 mirror the appeal on ground 8, I shall consider it with ground 8 under the caption "recent possession".

[42] In summary, however, I would dismiss grounds 6 and 9 of the appeal against conviction but may determine later what course should be taken since there was only proof of handling the stereo set. I would also dismiss the 2 aspects of ground 7 of the appeal, which were considered in paragraph 40 of this judgment.

Recent possession

[43] Mrs. Yearwood-Stewart noted that the trial judge explained the definition of recent possession to the jury. She submitted, however, that the judge should have gone a step further and assisted the jury on the application of that law to the facts in order to assist the jury to determine properly whether the possession was recent. Mrs. Yearwood-Stewart asked this court to note that, on the authority of *R. v Headley*,²⁵ the trial judge should have directed the jury on recent possession in relation to the amount of items stolen and recovered; the value of the missing item recovered; the time span between the actual missing of the item found, and the absence of any other evidence implicating the accused with handling the goods.

[44] Mrs. Yearwood-Stewart submitted, further, that notwithstanding the directions which the judge gave to the jury on the effect of the explanation which Warrington gave for the presence of the stereo set at his residence, the trial judge should have told the jury, further, that if the explanation left them in doubt as to the knowledge of Warrington that the item was stolen, the prosecution had not proved the offence and the verdict should be not guilty.

[45] It is my view that the trial judge gave the appropriate directions on this as the Record of the proceedings reveals. It reveals that the judge outlined and considered the prosecution's case, as well as Warrington's defence in relation to recent possession explaining the principles and assessing the evidence.²⁶ She then concluded as follows:²⁷

²⁵ (1964) 6 WIR 317.

²⁶ Particularly from page 270-274 of the Record of Appeal.

²⁷ See from page 274 line 17 to page 275 line 7 of the Record.

"I will remind you, Members of the Jury, that it is for the Prosecution to prove to the extent that you feel sure [of] every element before you can convict. If you are not sure that the set found at the accused home is the same set that was stolen from Maria's home or if you are not sure that it was in the possession and control of the accused, or you are not sure that his explanation amount(s) to a reasonable one under the circumstances, then your verdict must be not guilty. But, if after having considered all the evidence, you are sure that the set found at the accused home was properly identified and is the same set stolen from the home of Maria, and that it was in the accused possession, and if you are not satisfied that his explanation is a reasonable one under the circumstances, then your verdict will be guilty."

- [46] In the premises, I find no merit in this ground and would accordingly dismiss ground 8 of the appeal.

Summary

- [47] In summary, I would dismiss this appeal on all of the grounds. It is my view that even if I fell into error in my assessment of the grounds and should perhaps have allowed the appeal on any ground, I would still dismiss the appeal at the end of the day by resort to the proviso to section 38(1) of the Eastern Caribbean Supreme Court (Dominica) Act.²⁸ The proviso states that this court may dismiss an appeal if it considers that no miscarriage of justice has actually occurred, notwithstanding that it finds that a point which is raised by an appeal might be decided in favour of an appellant. A finding that no miscarriage of justice has occurred depends upon the strength of the prosecution's case.

- [48] A review of the evidence leaves me in no doubt that the stereo set which was found at Warrington's residence was the set which was stolen from Ms. Riviere's home. She clearly identified it by the serial number. That the set was missing for some months before it was found in Warrington's house by the police does not mean that his possession of it was not recent. The set is a household item, which will not usually be easily found if it is resting in a house other than that of the

²⁸ Cap. 4:02 of the Revised Laws of Dominica, 1990.

owner. There is no evidence that it is a unique item. It could be inferred from the evidence of Lennel Benoit that Warrington knew that the set was at his house and that it had been stolen. Warrington's explanation did not help his case. The evidence given at the trial by the 3 witnesses for the prosecution was not discredited upon cross-examination. I have not discerned any discrepancies, difficulties or other weaknesses in that evidence which would cause me to come to any other conclusion than that the prosecution's case was so strong that no miscarriage of justice actually occurred when Warrington was convicted.

- [49] With respect to the sentence, the evidence proved that Warrington may have handled the stereo set only, valued at \$1,500.00. It was seen that in *Machent v Quinn* the appellate court remitted the case to the justices with the direction that they enter a conviction for the only item that was proved on the evidence. I have found that ideally the charge in the present case should have been amended to reflect handling of the stereo set only. I pondered whether I should myself act on this direction. I was however minded to note that section 38(4) of the Eastern Caribbean Supreme Court (Dominica) Act states as follows:

“On an appeal against sentence the Court of Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal. (Emphasis added).

- [50] This court therefore only has jurisdiction to quash a sentence and pass an alternative sentence where there is an appeal against sentence. There was no appeal against sentence in this case. In fact, even in the absence of this, I recall that this court raised the question at the trial. Mrs. Yearwood-Stewart's response seemed to indicate that the absence of an appeal against sentence was not merely by inadvertence. Having had the opportunity to review the case more dispassionately, I think that her reaction was wise and well within reason. The maximum sentence for this offence is 14 years in prison. Warrington has antecedents that are unflattering. He has about 12 convictions for crimes of

dishonesty. In my view, then, there is no good reason to remit this matter to the High Court in the absence of an appeal against sentence.

[51] In the foregoing premises I would dismiss the appeal and affirm the conviction against the appellant for handling, contrary to section 23(1) of the Theft Act, in that the appellant, Angus Warrington, at some time between the relevant dates dishonestly received the stereo set believing that it was stolen. I would also affirm the sentence of 7 years imprisonment that the judge imposed upon him.

[52] I note for the record, and repeat the compliments which the court paid to Mrs. Yearwood-Stewart at the end of the hearing of the appeal, for her research and the manner in which her written and oral submissions were presented.