

GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.9 OF 1992

BETWEEN WINSTON NOEL - Appellant

and

THE QUEEN - Respondent

Before: The Hon. Mr. Justice C. M. D. Byron - President
The Hon. Dr. N. J. O. Liverpool - Justice of Appeal
The Hon. Mr. Satrohan Singh - Justice of Appeal

Appearances: Mr. Anselm Clouden for the Appellant
Mr. Keith Friday & Miss H. Gill for the Respondent

1993: Feb. 11th, 12th.

JUDGMENT

BYRON J. A.

On 30th November 1992, the appellant was convicted of housebreaking and stealing and sentenced to 4 years imprisonment by St. Paul J. sitting with a jury.

The facts adduced by the prosecution were that Mr. and Mrs. Bartholomew left their home at Molinere, St. George's, about 7.00 a.m on 6th November 1990 for work. At about 12.00 noon on their return they noticed that louveres were missing from the bathroom and certain items, including a Sharpe video player were missing from their home. They called the police who came to their home to carry out investigations. Late that day while the police were at their home, Mrs. Bartholomew saw missing items including the video player in an abandoned house next door and showed them to the police. During the investigations carried out at the scene on that day the police lifted a fingerprint from the video machine which their expert identified as being that of the appellant. There was no other evidence connecting the appellant

with the crime.

The appellant gave evidence on oath denying that he visited Molinere on the 6th November 1990, and set up an alibi giving details of his whereabouts on that day. He alleged that during the police investigations he was beaten and his fingerprints were taken without his consent.

It has proven unnecessary to consider the appellant's submissions on the admissibility and probative value of the fingerprint evidence because as the learned D.P.P has conceded, there was a fatal error in the directions given to the jury by the learned trial judge, when he told the jury rather emphatically that although the appellant was saying that he was severely beaten to give his fingerprints, he never denied that the print lifted from the video machine was his.

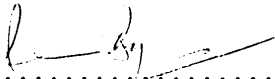
This was clearly wrong and went to the root of the issue which the jury had to decide. The burden of proof lay on the prosecution to establish that it was the appellant's fingerprint which was found on the video machine. The appellant never had any obligation to deny or disprove this allegation. But in this case, the sworn testimony he gave denying his presence on the scene and asserting his presence elsewhere at the material times was a definite denial that his print could have been on the machine. The evidence of the police fingerprint expert was undoubtedly in issue.

The direction given by the trial Judge could only have had the effect of influencing the jury to the false view, that the presence of the appellant's fingerprint on the video machine was not a fact in issue because it had been established by his own admission. This view, without more, could have resulted in the jury's verdict.

In the absence of any other evidence connecting the appellant with the crime we are unable to erase our doubts as to

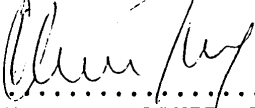
the probability of the jury returning the same verdict had it been left for them to consider whether the prosecution had established beyond reasonable doubt, that it was the appellant's fingerprint which was on the video machine, and that it was he who broke and enter the dwelling house and stole the articles therein.

In the circumstances, we are of the view that the verdict is unsafe and unsatisfactory and must be set aside.



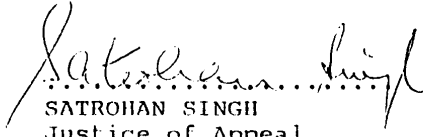
 DENNIS BYRON
 Justice of Appeal

I concur.



 DR. N. J. O. LIVERPOOL
 Justice of Appeal

I concur



 SATROHAN SINGH
 Justice of Appeal