

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL JURISDICTION)

CASE NO. ANUHCR 2023/0016

BETWEEN:

THE KING
and
LYNDON OLIVER

Appearances:

Mr. Cedrick Dyer and Mr. Daniel Lattery, Counsel for the Crown
The Defendant in person

2023: July 17th, 21st, 28th

JUDGMENT

- [1] **WILLIAMS J.:** On 28th February, 2023 the defendant, Mr. Lyndon Oliver, was indicted for the offence of larceny, contrary to section 4 of the **Larceny Act, Chapter 241 of the Laws of Antigua and Barbuda, Revised Edition 1992.**
- [2] The particulars of offence, (as amended), stated that:
- “Lyndon Oliver, also known as Dave Henry, on the 11th day of June, 2021 at Nugent Avenue, in the Parish of Saint John in the State of Antigua and Barbuda, stole two (2) doors, valued at EC\$1,382.60 the property of the Government of Antigua and Barbuda.”
- [3] Section 4 of the **Larceny Act of Antigua and Barbuda** indicates in the side note ‘Simple larceny.’ The section states:

“Stealing for which no special punishment is provided under this or any other Act for the time being in force shall be simple larceny and a felony with imprisonment with hard labour for any term not exceeding three years.”

[4] At section 3 (1) of the **Act**, “steals” is defined as follows:

“[A] person steals, who, without the consent of the owner, fraudulently and without claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof:

“Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner.”

[5] Section 4 of the **Antigua and Barbuda Larceny Act** reads as though the intention was to provide the punishment for simple larceny, rather than to create an offence. It is not worded in a manner for example as: “Anyone who, without the consent of the owner fraudulently and without claim of right made in good faith, takes and carries away anything capable of being stolen with intent at the time of such taking, permanently to deprive the owner thereof commits an offence.”

[6] Section 4 of the **Antigua and Barbuda Larceny Act** however is identical (except for the punishment) to section 2 of the **United Kingdom’s Larceny Act, 1916**. The learned authors of Archbold Criminal Pleading Evidence & Practice, 36th Edition, at paragraph 1464 cite the case of **R v Bryant (No. 2)** [1956] 1 WLR 133, [1956] 1 All ER 340n, 120 JP 103, 100 SJ 133, 40 Cr. App R 6, for the proposition that “although section 2 deals with punishment and does not create the offence of larceny at common law, it is unobjectionable, and indeed convenient, to refer to section 2 where a charge of simple larceny is preferred, as it serves to direct the attention of the court to the fact that the charge is not one of compound or aggravated larceny and to the punishment which the offence charged carries.”

[7] The Crown was therefore required to prove so that the forum of fact was sure:

- a. The property belonged to another (natural or legal person);
- b. The property was appropriated;
- c. The appropriation of the property was done dishonestly;
- d. There was an intention of permanently depriving the other person of their property; and
- e. It was the Defendant who did the dishonest appropriation with the requisite intent.

Jurisdiction

[8] The Antigua and Barbuda Legislature initially enacted the **Criminal Proceedings (Trial By Judge Alone) Act**, No. 8 of 2021, which was signed into law by the Governor-General on 28th May, 2021. The initial law had a ‘sunset clause’; however on 18th May, 2023 and 25th May, 2023 the House of Representatives and the Senate respectively approved an amendment of **Act No.**

8 of 2021 to, *inter alia*, extended the time period for the operation of the legislation. On 5th June, 2023 the Governor-General signed into law the **Criminal Proceedings (Trial by Judge Alone) (Amendment) Act**, No. 5 of 2023.

- [9] Section 4 (2)(a) of the original enactment provided that any person who was indicted for offences under the **Larceny Act**, Cap. 241 “shall be tried before a judge of the court sitting alone without a jury.”
- [10] Pursuant to the legislation, a Case Management Conference was held. Mr. Oliver indicated that he desired to have only two of the witnesses listed on the back of the indictment present at court to be cross examined by him.

Crown’s Case

- [11] The agreed evidence of Mr. Robert Martin was that in July 2021, he was the security Chief at the Ministry of Public Works and his duties extended to the National Technical Training Centre, NTTC, on Nugent Avenue. At about 1:00 pm on 11th July, 2021 he received certain information and he journeyed to the NTTC. When Mr. Martin got to the NTTC he noticed that six wooden doors to six different rooms that were previously hung on hinges in the building were missing. Several air condition units were also missing. He did not give anyone permission to remove the items from the NTTC.
- [12] Mr. Jerrod Bowers was driving along Nugent Avenue at about 12:35 pm on Sunday 11th July, 2021; he was heading to the beach. Mr. Bowers looked towards the NTTC building where a friend of his was engaged to do some construction work. There was a white Toyota Axio vehicle, registration number R3001 parked at the side of the road and there were some doors at the side of the vehicle, towards the NTTC building. He saw one person, a male, who appeared to be urinating. Mr. Bowers after passing the building looked in his rear view mirror and noticed that the man, who had a rasta hair style, began to put the doors on the roof of the car. Shortly after Mr. Bowers got to Old Parham Road, he turned his vehicle around and went back to Nugent Avenue, traveling in the opposite direction this time to that he earlier drove. Mr. Bowers saw the male person was still placing the doors on the roof of the vehicle. Mr. Bowers drove up to Factory Road, turned the vehicle he was driving around once more and headed back to Nugent Avenue; he felt that he needed to video record on his cellular phone what was taking place. By the time Mr. Bowers reached the NTTC building, the white Toyota vehicle had moved and was at the end of Nugent Avenue and turned on to Old Parham Road. Mr. Bowers followed the vehicle and video recorded part of the journey. The vehicle turned off of Old Parham Road on to one of the side streets and Mr. Bowers drove behind the vehicle which eventually came to a stop beside a green coloured house. Mr. Bowers continued his journey.
- [13] The police later extracted a copy of the video Mr. Bowers recorded from his cellular phone.

- [14] The Defendant in cross-examining Mr. Bowers sought to confirm that the witness did not recognise the Defendant's face in the yard of the NTTC. The witness was unable to say whether at the time the Defendant had a rasta hairstyle. Mr. Bowers denied that there were other persons besides the male with the rasta hairstyle in the yard of the NTTC; Mr. Bowers said he did not see any security officer or a van with a "Spanish man" and children. The Defendant put to Mr. Bowers that while he, Mr. Oliver, was the driver of the car, the rasta man was on a different mission; the witness said he did not know. Mr. Bowers also denied that there was any rubbish heap where the car was parked.
- [15] Sergeant No. 568 Jeffrey Benjamin testified about what transpired on Monday 12th June, 2021 when the accused was interviewed at the Saint John's Police Station by Constable No. 135 Nelson. This was the day after the theft of the doors was alleged to have taken place. While the Defendant was at the Police Station, he was shown a copy of the video footage that was recorded by Mr. Bowers. The Defendant's custodial interview was admitted without objection. Among the questions and answers were the following exchanges:

Q: Were you on Nugent Avenue at the National Technical Training Center yesterday?
A: Yes sir
Q: What were you doing there?
A: Me hear ah u say them lost all kind ah summen. Ah we only take up two single door; that ah the only thing.
Q: You and who went to NTTC?
A: Me one really go dey.
Q: How did you remove the doors?
A: When we go by the rubbish heap the doors them was in the building but they were leaned up against the wall. Six doors when I checked.
Q: How many of the doors did you take up?
A: Two.
Q: When you took up the doors, what did you do with them?
A: When me carry them out, me put them on the car top. Cause only two doors could hold on the car top.
Q: What did you do with the doors?
A: Ah we sell them for \$50.00 EC and a little weed.
Q: How many times did you go to NTTC?
A: One time. One single time me go there. When we go back to take up two more, a jeep park inside on the compound so ah we pass straight.
Q: The allegation is that you stole six doors and there A.C units from NTTC. What do you have to say about that?
A: Me thief two door. That is the only thing I take up, two door.

- [16] The Defendant in his cross examination of Officer Benjamin sought to elicit what transpired at Mr. Oliver's home at Skeritt's Pasture when the police went there. The witness could not recall most of the things Mr. Oliver asked about.
- [17] Constable No. 135 Cedrick Nelson was the investigating officer in the matter. He testified that he visited the NTTC on 12th July, 2023 in the company of Mr. Martin – the Security Chief of the Ministry of Public Works. Constable Nelson made observations regarding the missing doors. Later that day, officer Nelson along with then Police Corporal Benjamin went to the home of the Defendant. Mr. Oliver was taken into custody. Constable Nelson testified that at the police headquarters, he proceeded to interview the Defendant and showed Mr. Oliver some video footage on the computer. Mr. Oliver said: "I don't want to see no footage. I see it already."
- [18] Mr. Oliver questioned the Police Officer extensively about the quality of the investigation, whether the officer failed to follow leads and the fact that no search warrant was obtained and executed in this matter. Officer Nelson said that while he did receive information as to where the doors might be, when he checked, he did not find the person whom he went to look for. The Investigator said that the information provided by Mr. Oliver was different every time the Officer spoke with the Defendant. Mr. Oliver elicited from the witness, Constable Nelson, that they knew each other for several years; the Officer in fact went to the same premises many years ago to have his vehicle repaired.
- [19] Following the close of the Crown's case, the options were explained to the Defendant. He elected to give a statement from the dock and he did not call any witness on his behalf.
- [20] The Defendant's contention was that a security officer at the NTTC who gave him the doors. He said that he saw six old doors, but he only got one initially; then the security officer told the "Spanish people" to give him, the Defendant, another door. He disputed the value of the doors, saying that they were old and valued \$200.00 to \$300.00.

Assessment

- [21] There was no substantial dispute between the Crown's narrative of what occurred on Sunday 11th July, 2021 and the case advanced by the Defendant. The Defendant sought to canvass during cross examination that he told persons that it was the security officer at the NTTC who gave him the doors and that the doors were discarded on the rubbish heap.
- [22] There was no doubt as to identification. The Defendant in his interview placed himself at the NTTC, confirmed that he was the one who transported the doors from the NTTC and that he sold the doors. Notably, the Defendant said in his evidence that the doors were valued at \$200.00 to \$300.00; and in his interview with the police, he said that he sold them for "\$50.00 and a little weed."
- [23] The doors were removed from the NTTC. They were not Mr. Oliver's property. The Defendant contended that the appropriation was not done dishonestly, in that it was the security at the premises who gave him permission to remove the doors. It was noticeable from the custodial interview that it

was only possible to transport two doors at a time on the motor car. Mr. Oliver stated that when he went back to the NTTCC, a vehicle was parked inside the compound, so he passed straight. That conduct does not suggest someone who had an honest, genuine claim of right to the property.

- [24] The Crown has established that Mr. Oliver dishonestly appropriated property belonging to someone else, and that Mr. Oliver did so with the intention of permanently depriving the lawful owner of the doors; in fact he sold them.
- [25] Mr. Lyndon Oliver is therefore guilty of larceny of two doors valued at \$1,382.60.

Colin Williams
High Court Judge

By the Court

Registrar