

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO. ANUHCR 2018/0053

BETWEEN:

**THE QUEEN
and
WESLEY BLANCHETTE**

Appearances:

Ms. Rilys Adams, Counsel for the Crown
Mr. Lawrence Daniels, Counsel for the Defendant

2021: July 1st, 15th

JUDGMENT

- [1] **WILLIAMS J.:** In early 2016, the virtual complainant, Ms. Reise Bright, wanted to buy a vehicle for her father. Ms. Bright needed someone to source the vehicle out of Japan and import it to Antigua. Based on a conversation Ms. Bright had with someone, she contacted the Defendant, Mr. Wesley Blanchette to bring in the vehicle for her.
- [2] Ms. Bright knew the Defendant while she was growing up in Ebenezer Village; she knew that he used to be a bus driver.
- [3] Mr. Blanchette and a female companion went to Ms. Bright's home to discuss what was required to import the vehicle. Ms. Bright later paid the Defendant EC\$1,000.00 as a deposit on the vehicle. This marked the commencement of their business relationship.
- [4] Ms. Bright then changed her mind about buying the vehicle for her father. She requested of Mr. Blanchette a refund of her money. The Defendant explained that once the money was sent off to Japan, there was no way that it can be refunded but the funds could be held by the exporters in the

event that she wished to purchase another vehicle. Ms. Bright thought of her options and decided that she should replace her vehicle. Ms. Bright then spoke with Mr. Blanchette about getting a Toyota Allion. Mr. Blanchette quoted a price of EC\$14,000.00; this sum included the EC\$1,000.00 that Ms. Bright had previously paid to the Defendant.

- [5] A payment plan was worked out between the Virtual Complainant and the Defendant. Ms. Bright would pay the sum of \$1,000.00 monthly towards the purchase of the vehicle. Ms. Bright was subsequently informed by the Defendant that an additional sum of \$3,000.00 was required for customs.
- [6] Ms. Bright on the 22nd August, 2016 sold the vehicle she had at the time. That very day she made a lump sum payment to Mr. Blanchette. She paid in all EC\$17,000.00.
- [7] Towards the end of August, Mr. Blanchette informed the Virtual Complainant that the vehicle “was on its way.” Ms. Bright was proceeding on vacation to North America for the month of September and arrangements were put in place with the Defendant for the vehicle to be delivered to Ms. Bright’s father.
- [8] When Ms. Bright returned to Antigua at the beginning of October, the vehicle still was not in the country. The Defendant went to Ms. Bright’s home and explained to her that because of a hurricane, there was a delay in the shipment, but that the vehicle was on its way.
- [9] Ms. Bright on a later occasion requested that the Defendant provide her with documentation regarding the vehicle. The Defendant subsequently did so. He gave Ms. Bright an invoice that showed two vehicles, a Toyota Allion and a Toyota Alteeza, were being imported. On the invoice that Mr. Blanchette provided, Ms. Bright noticed a name and number; she decided to call the number. She spoke with Mr. Adrian Richardson.
- [10] Mr. Richardson operates a business, ‘A & J Imports and Rent-A-Car.’ He imports vehicles from Japan for persons. Mr. Richardson met the Defendant on the 22nd August, 2016 when Mr. Blanchette wanted to import two vehicles – a Toyota Allion and a Toyota Alteeza. The purchase price for the Toyota Allion was EC\$11,150.00. Mr. Blanchette paid a deposit of EC\$5,400.00 for both vehicles. At the time, Mr. Blanchette informed Mr. Richardson that the consignees for the vehicles were two sisters who resided at Cooks Hill. The Toyota Allion was for Lizette Proctor.
- [11] Sometime in September 2016, the Defendant contacted Mr. Richardson and instructed him to have the name of the consignee for the Toyota Allion changed from Ms. Proctor to Reise Bright. By this time, the shipment had already left Japan and Mr. Richardson told the Defendant that the action was a bit unusual but that he, Mr. Richardson, will have to contact the suppliers in Japan to have the change made. The necessary name change was made.
- [12] Apart from the initial deposit, Mr. Blanchette made two further payments to Mr. Richardson for the importation of the vehicles; however Mr. Blanchette did not pay off the balance in full.
- [13] Ms. Bright paid Mr. Richardson an additional EC\$12,000.00 and she took delivery of the Toyota Allion vehicle, which she still has.

Crown's Case

- [14] The Crown's case is that Ms. Bright engaged the Defendant to import a motor car for her. She completed paying him in full in August of 2016. Ms. Bright kept on getting excuses from the Defendant as to why she was not getting the vehicle on several promised occasions. Eventually Ms. Bright received an invoice from the Defendant which included the make and model of the vehicle she desired. She requested a refund of a specified amount from the Defendant, but did not get it.
- [15] Sometime after Ms. Bright entrusted her monies to Mr. Blanchette, the Defendant placed an order through Mr. Richardson for two vehicles from Japan. The deposit that Mr. Blanchette paid to Mr. Richardson was for the import of a Toyota Allion and a Toyota Alteeza. Mr. Blanchette initially informed Mr. Richardson that the consignee for the Toyota Allion was another person. Sometime later, the Defendant asked Mr. Richardson to replace the name of the original consignee with the name of the Virtual Complainant.
- [16] After the Toyota Allion that was ordered by Mr. Blanchette arrived in Antigua, Ms. Bright had to pay Mr. Richardson for the vehicle.

Defendant's Case

- [17] The Defendant's case is that while he received monies from the Virtual Complainant to import a vehicle, only the make and model of the vehicle was specified: a Toyota Allion. No other details were agreed to as for example model year, colour or condition of vehicle. There was no undertaking from the beginning as to a delivery date.
- [18] Mr. Blanchette then engaged another person, Mr. Richardson of A & J Imports and Rent-A-Car to import the vehicle. The Defendant made payments to Mr. Richardson. The Defendant provided information to the Virtual Complainant, which enabled her to contact Mr. Richardson. Following that, no one communicated with the Defendant about the vehicle. He only received a message that the vehicle was delivered to Ms. Bright and he does not know about any further payment to Mr. Richardson for the vehicle.

The Charge

- [19] Mr. Blanchette was indicted on the 9th day of October, 2018 for Fraudulent Conversion, contrary to section 21 (1) (c) of the **Larceny Act** Cap. 241 of the Laws of Antigua and Barbuda, Revised Edition 1992.
- [20] The particulars of the charge states that "between the 9th day of May, 2016 and the 22nd day of August 2016, at St. Johns in the State of Antigua and Barbuda, fraudulently converted to his own use and benefit the sum of EC\$17,000.00 entrusted to him by Ms. Reise Bright for the purpose of purchasing one (1) Toyota Allion motor car."
- [21] The section of the **Larceny Act** under which the Defendant was charged provides:

“Every person who, being entrusted either solely or jointly with any other person with any property in order that he may retain in safe custody or apply, pay, or deliver, for any purpose or to any person, the property or any part thereof or any proceeds thereof, fraudulently converts to his own use or benefit, or to the use or benefit of any other person, the property or any part thereof or any proceeds thereof, shall be guilty of a misdemeanour, and on conviction thereof liable to imprisonment with or without hard labour for any term not exceeding seven years.” (Highlights added).

[22] The Crown is therefore required to prove:

- a. That the Defendant, Mr. Blanchette, was entrusted with property;
- b. That the property was for a specified or particular purpose;
- c. That Mr. Blanchette fraudulently converted the property (or any part of it) to his own use.

[23] There is agreement between both sides on a number of things, such as:

- I. Ms. Bright engaged the services of Mr. Blanchette to have a Toyota Allion motor vehicle imported from Japan.
- II. The price of the vehicle agreed to between the Virtual Complainant and the Defendant was EC \$14,000.00 and Customs charges of EC \$3,000.00 for a total of EC \$17,000.00.
- III. Payments were made to the Defendant by the Virtual Complainant in six installments: on the 9th of May 2016; 3rd of June 2016; 13th July, 2016; 3rd August, 2016; 15th August, 2016; and 22nd August, 2016.
- IV. It was only after the full payment was made that there was any discussion as to a possible arrival date of the vehicle. This was just before the Virtual Complainant left Antigua for vacation.
- V. There were delays in the estimated arrival dates of the vehicle.
- VI. Ms. Bright requested of Mr. Blanchette that he return to her the \$3,000.00 that was given to him to clear the vehicle. He did not comply with the request.
- VII. A Toyota Allion was one of two vehicles imported by Mr. Richardson of A & J Imports and Rent-A-Car in October 2016.
- VIII. Ms. Bright did not give instructions to Mr. Richardson at any time to import any vehicle for her. The person who dealt with Mr. Richardson of A & J Imports and Rent-A-Car about importing the Toyota Allion was the Defendant, Mr. Blanchette.
- IX. The Toyota Allion was cleared in Ms. Bright's name.
- X. Ms. Bright got possession of the Toyota Allion that was imported by A & J Imports and Rent-A-Car; it was then insured and licensed in her name.

[24] There are matters on which the parties are not agreed. These include:

- I. That it was necessary for Ms. Bright to pay A & J Imports and Rent-A-Car an additional EC \$12,000.00 to get the Toyota Allion.
- II. That the Defendant paid Mr. Richardson of A & J Imports and Rent-A-Car to bring in the Toyota Allion for Ms. Bright.

- III. That Mr. Blanchette fraudulently converted any of the funds entrusted to him by Ms. Bright for the purchase of the vehicle to his own use.

Caution and Dock Statements

- [25] Mr. Blanchette was taken into police custody after Ms. Bright lodged a report with the Criminal Investigations Department. The Defendant gave a statement to the police under caution on the 28th November 2016, in which he said:

“Me get the money from Miss Bright. Me give Adrian the money. The last thing me hear was the car was at the Port. Me get \$17,000.00 from Miss Bright. Adrian is Adrian Richardson of A & J Imports and Rent-A-Car. He is the one I give the money. I don’t remember the amount off hand. If I get my receipt I will be able to tell you.”

- [26] The Defendant at trial elected to give a statement from the dock. He said:

“I live in Golden Village. I had a business transaction with Adrian Richardson. I come right here at the High Court, back of the parking lot. I gave him the deposit he asked me for. He called me, said the cars were on their way to Antigua and he need to get some more money.

“A Friday afternoon he came, he and his family and collected the money from me, gave me my receipt. I handed him the cash and he drove off. He told me the cars will take one month and a week to come here. Every month I keep calling: ‘they on their way, they on their way, they on their way.’ On the two vehicles I balance him \$3,500.00. I told him whenever I get the documents he can get the \$3,500.00. Unfortunately I got arrested. The cars them came here. They took the cars them out unknown to me. He never had the decency to call me. He say his lawyer called me; that is not so, because I was locked up and I never get any message that anybody call me.

“I took my bail. I come to the High Court couple of time looking for him, I can’t find him no time. I come here, when I ask around they say he’s on vacation, he’s on leave, all kinds of explanation...

“I never see none of the two cars and he got the money. He went to my house and he left a message saying he gave Reise the car, because he didn’t want to be in no trouble with no young people. That is the message he left there. He never mentioned he got \$12,000.00 for the car I paid him to bring in.

“When I got bail, he was the one who pick me up from the prison and brought me over here. I told him he have the heart.”

- [27] Based on Mr. Blanchette’s caution statement, his statement from the dock and the manner in which the defence was conducted, it is apparent that the Defendant’s case is that he paid Mr. Richardson of A & J Rent-A-Car to bring in two vehicles, including the Toyota Allion. Also, there was no need for the Virtual Complainant to pay an additional \$12,000.00 to get the vehicle.

Burden and Standard of Proof

- [28] Even though this was a 'Bench Trial', conducted by a Judge-alone, sitting without a jury, pursuant to the **Criminal Proceedings (Trial By Judge Alone) Act** No. 8 of 2021 which entered into force on the 7th July 2021, the burden of proof and the standard of proof remain the same as they were and are in every criminal case. It is the Crown that has the responsibility of satisfying the forum of fact that it was the Defendant who committed the offence as alleged; and the Crown can only do so by making the forum of fact feel sure of the Defendant's guilt.
- [29] Mr. Blanchette has nothing to prove; he does not have to prove that he is innocent; he does not have to prove he did not do what is alleged. It is the Crown that has to disprove any account that tends to show that Mr. Blanchette is innocent and to convince the forum of fact so that it is sure that Mr. Blanchette fraudulently converted the funds entrusted to him by Ms. Bright. The burden of proof remains throughout on the Crown and the forum of fact must be sure of the guilt of the Defendant in order to return a guilty verdict.

Discrepancies, Inconsistencies and the Conflict of Dates

- [30] There were some apparent conflicts or discrepancies between the timelines described by the various witnesses. It is for the forum of fact to address and resolve those conflicts. Consideration has to be given where these conflicts arise, as to which version may be correct. The effect of these conflicts and discrepancies must also be looked at for the overall effect that they have on the credibility of the witnesses and how they impact on the case.
- [31] It must be remembered that the events in this matter occurred almost five years ago. Also, the statements from the principal witnesses would have been recorded months after the actual event which they spoke of in their statements. It must also be remembered that witnesses would not each have the same powers of observation, retention, recollection and description. However, the quality most important to the trial process is truthfulness, honesty and reliability of the testimony from the witnesses.
- [32] It is recognized that an honest witness may be a mistaken witness. Likewise, an untruthful witness could be a convincing witness. But not every misstatement by a witness may be tainted with an evil intent; sometimes, the reason for the mistake could be completely innocent – for example a lapse of memory, or having to recall events from a distant time. However, if the reason for the error appears to be a deliberate effort to mislead, then the testimony of the witness may well be disregarded for being untruthful. An intent on the part of a witness to deceive will be treated differently from where there is a plausible explanation for an error.
- [33] Further, it must be considered whether the discrepancy and inconsistency go to the root of the case or is merely a peripheral issue. It is only if the discrepancy is so fundamental to the case that it needs to be fully interrogated.
- [34] It is however recognized that not every disputed point that has to be addressed. Rather only those which are necessary to enable a verdict to be arrived at need to be resolved. Where ever any such

conflicts arise, the reliability, honesty and accuracy of the witness has to be considered. This same fair standard is to be applied to all the witnesses who gave evidence in the case.

[35] An unchallenged aspect of the testimony from Mr. Adrian Richardson was the explanation he received from Mr. Blanchette in September to change the name of the consignee information for the Toyota Allion from Lizette Proctor to Reise Bright. Mr. Richardson stated that he received communication from the Defendant, saying that he, Mr. Blanchette, was in police custody regarding the motor vehicle that was ordered naming Ms. Proctor as the consignee. Based on the rest of the evidence, Mr. Blanchette was not in police custody in relation to this matter until November – sometime after the vehicle had already arrived in the country. The statement that the Defendant said to Mr. Richardson in September that he was in custody concerning the Toyota Allion can be contrasted with the rest of the evidence in the case:

- i. In September, Ms. Bright was not in Antigua;
- ii. In September the relationship between Ms. Bright and Mr. Blanchette had not yet taken a turn for the worse. She was expecting the vehicle to be delivered sometime that month to her father;
- iii. Ms. Bright in her testimony said that she did not go to the police until November;
- iv. Assistant Superintendent of Police, Allan Chambers, corroborates Ms. Bright's timeline when he said he received a report from Ms. Bright on the 15th November, 2016;
- v. It was not until the 28th November, 2016 that ASP Chambers saw the Defendant.

[36] It is the Defendant's case and it was put to Mr. Richardson in cross examination that it was the Defendant who instructed Mr. Richardson to deliver the Toyota Allion to Ms. Bright.

[37] Looking at the totality of the evidence, if the Defendant did indeed give the explanation of being in police custody in September to Mr. Richardson, then it may not have been true; or Mr. Richardson's recollection as to the reason given by Mr. Blanchette may be wrong.

[38] The issue as to precise dates however proved to be challenging for most witnesses, except for ASP Chambers, whom the Defence consented to the Crown asking leading questions, and the evidence with regard to the exhibits that were tendered and admitted (those being the six receipts the Defendant issued to the Virtual Complainant; and the Defendant's caution statement).

No Refund

[39] The business relationship between Ms. Bright and Mr. Blanchette soured when Ms. Bright returned from her vacation in October. Ms. Bright expected that the vehicle would have been available to her upon her return.

[40] After Ms. Bright had received the invoice from the Defendant and spoke with Mr. Richardson, she made a request of Mr. Blanchette to give her back the \$3,000.00 that she had given to him to clear the vehicle from the Customs. This evidence that she requested a refund of the sums allocated for Customs was unchallenged. Mr. Blanchette did not refund the money as was requested of him.

Credibility

- [41] The Crown's case against the Defendant depends to some degree on Mr. Adrian Richardson's credibility. Mr. Richardson's testimony deserved the closest scrutiny, since he may well have an interest to serve. The Defendant maintains that he paid Mr. Richardson. There was a deposit followed by two installments. Mr. Richardson was pressed in cross examination as to the quantum of the installments, currency in which he was paid and what sum did he demand of the Defendant to clear the vehicles. He was unable to recall those figures with any precision.
- [42] In relation to what sums of money were paid to Mr. Richardson, it is apparent from the Defendant's caution statement that he did not pay all of the money to Mr. Richardson. Also, the Defendant in his dock statement said that he had an outstanding balance of \$3,500.00 for Mr. Richardson.
- [43] Mr. Richardson in his evidence in chief, spoke of a telephone conversation he had with the Defendant after the vehicles arrived and were at the Port waiting to be cleared:
- "I placed a phone call to Mr. Blanchette in the presence of both consignees. My phone was on speaker and I was the only one speaking with him. I put some questions to him. I informed him the vehicles are here and asked him when will he be settling payment for both consignees. He said to me Reise has not paid him all the monies and he is not bothering with her and for the other consignees, Ms. Robbins, he is making arrangements to deal with the payment."
- [44] It is noted that Mr. Richardson under cross examination could not recall certain specifics about the financial transactions with the Defendant. It is also noted that Mr. Richardson claimed that it was a "speechographical error" when he agreed that it was the Defendant who instructed him to deliver the Toyota Allion vehicle to Ms. Bright. However, it is believed that the telephone conversation he detailed did in fact take place.

Findings

- [45] The following findings of fact are made:
- 1) The virtual complainant, Ms. Reise Bright commencing the 9th May, 2016 and up to the 22nd August, 2016 paid to the Defendant Wesley Blanchette sums of money totaling \$17,000.00.
 - 2) The purpose of those payments were for Wesley Blanchette to import a Toyota Allion motor car for Ms. Reise Bright.
 - 3) Ms. Reise Bright was told that of the \$17,000.00, the vehicle would cost \$14,000.00 and \$3,000.00 would be to clear the vehicle through Customs.

- 4) After Reise Bright made the full payment of \$17,000.00 to Wesley Blanchette on the 22nd of August 2016, Wesley Blanchette made a deposit of \$5,400.00 with Adrian Richardson of A & J Imports and Rent-A-Car to bring in two vehicles.
- 5) Among the two vehicles for which Wesley Blanchette made a deposit to import was a Toyota Allion valued at \$11,150.00.
- 6) The Toyota Allion and the other vehicle for which Wesley Blanchette paid the deposit, concerned Lizette Proctor and her sister.
- 7) Sometime after the Toyota Allion was ordered, Wesley Blanchette got Adrian Richardson to have the name of the consignee of the Toyota Allion changed from Lizette Proctor to Reise Bright.
- 8) Wesley Blanchette did pay additional installments to Adrian Richardson for the importation of the Toyota Allion and the other motor vehicle.
- 9) Wesley Blanchette refused to give back any money to Reise Bright, who requested of him to reimburse her the funds that were allocated for Customs charges that she paid to him.
- 10) When the vehicles arrived in Antigua, Wesley Blanchette, still owed Adrian Richards for the importation of the vehicles.
- 11) Wesley Blanchette did not pay Adrian Richardson the remainder of the funds due to him for importing the vehicles.
- 12) Wesley Blanchette informed Adrian Richardson that Reise Bright had not yet paid him for the vehicle and that he was not bothering with her. Reise Bright paid Adrian Richardson an additional \$12,000.00 for the Toyota Allion.

[46] In order for Wesley Blanchette to be convicted of the offence, of fraudulent conversion, he must be found to have had a fraudulent intent. The Defendant's intent can be inferred from the following factors:

- 1) When Ms. Bright first sought to engage the services of Mr. Blanchette, it is clear that she was looking for someone who was capable of importing the vehicle and was not seeking the services of an intermediary to contact an importer.
- 2) When Ms. Bright for the first time sought to get a refund from Mr. Blanchette, his representations that the money had already been sent off to Japan and that the money would remain there in case she wished to get another vehicle was false. No money had been paid to any company overseas at that time.
- 3) Mr. Blanchette did not have any contacts with any company in Japan to be able to source any vehicle. He worked through Adrian Richardson of A & J Imports and Rent-A-Car. Mr. Blanchette had already been paid the full price of the vehicle plus

anticipated Customs charges by the time he first contacted Mr. Richardson on the 22nd August, 2016.

- 4) Even though Mr. Blanchette had received all the money from Ms. Bright, when he made arrangements with Mr. Richardson to bring in the Toyota Allion and another vehicle, he paid less than one-third of what he had already collected from Ms. Bright as a deposit on both vehicles.
- 5) Mr. Blanchette did not pay Mr. Richardson the entire sum for the vehicle, even though the price quoted by Mr. Richardson was less than what Mr. Blanchette told Ms. Bright the vehicle would cost. Instead he represented to Mr. Richardson that Ms. Bright had not yet paid.
- 6) Mr. Blanchette did not reimburse Ms. Bright any money at all, even when she asked him to.

[47] It is clear that Wesley Bright applied the funds entrusted to him by Ms. Reise Bright to his own use.

Conclusion

[48] Wesley Blanchette is guilty of fraudulently converting to his own use and benefit money entrusted to him by Ms. Reise Bright for the purpose of purchasing a Toyota Allion car.

Colin Williams
High Court Judge

By the Court

Registrar