

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

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

CASE NO: ANUHCR 2020/0054

BETWEEN:

THE QUEEN

Vs.

JANELLEE JACKSON

Before: Her Ladyship Justice Ann-Marie Smith

Appearances:

Mrs. Shannon Jones-Gittens, Counsel for the Crown
Mr. Lawrence Daniels, Counsel for the Defendant

Defendant present

2021: June 18th, 21st, 22nd, 23rd
July 15th

DECISION

Background

- [1] **SMITH, J.:** The recently concluded trial is the second to be tried pursuant to the **Criminal Proceedings (Trial by Judge Alone) Act, 2021 of Antigua and Barbuda, in this Court**. The case commenced on Friday 18th June, 2021 and concluded on 23rd June, 2021 with the decision being reserved for 30th Wednesday, June 2021.
- [2] At her arraignment the defendant, Ms. Janellee Jackson entered a plea of not guilty to a single count on the indictment of **Larceny by a Servant contrary to section 20 (1) (a) of the Larceny Act, Cap 241 of the Revised Edition (1992) of the Laws of Antigua and Barbuda**.

- [3] The Crown's case was that the defendant while employed at Chase Distributors as a cashier appropriated the sum of \$10,831.83 EC. The Crown alleged that the larceny took place between 3rd December, 2018 and 17th January, 2019. In order to prove the larceny the Crown called eight (8) witnesses and indicated that they would also be relying on circumstantial evidence.
- [4] It was the defence case that an essential element of the Crown's case had not been proved, the Crown had not proved its case beyond a reasonable doubt and that their client was not guilty.

The Evidence

- [5] The first witness was Mr. Desmond Chase who is the Managing Director of Chase Distributors located at Sidney Wallings Highway. He said that his business is food wholesale, retail and grocery store. He testified that he is responsible for all the activities and that he makes sure that the cashiers, managers and supervisors execute their duties in a proper manner to ensure the company has good customer service. He said that he knows the defendant Ms. Jackson as she worked at Chase Distributors and that she held various roles at his business including that of cashier and customer service representative.
- [6] It was his testimony that the cashiers would check out the customers using the point of sale (herein after called the "POS") system which is a system that scans the items and provides the total for the customer. It is connected to the server with a switch that connects the server to the point of sale so that everything can flow.
- [7] The person who was responsible for the upkeep of the computer system was Richard Rodriguez who resided in Florida. He said that to access the system a supervisor has to scan a card or punch in a code. He said that cashiers will have a different access from the supervisors. The cashiers would access when they first started their shift, during their shift to provide change for customers, to manage cheques that are used in a transaction. Most times the cashiers are assigned to a station by the supervisor. The system requires authorization before anyone can access it.
- [8] At the beginning of the shift a supervisor will have to give a cashier authorization to start/sign in a shift by scanning their card. Each cashier had a sign in code to operate under and this was used to track their transactions. He said the policy for refunds was as follows:-
- 1) If a customer requires a refund, he/she will approach cashier or supervisor with their complaint or reason for requested refund. the supervisor would take charge of the process and issue the cashier with instructions about what to do or:-
 - 2) If the customer went straight to the cashier, the cashier would inform the supervisor of the request for a refund

- [9] He said that in regard to the refunds he expected to see a signed slip from the cashier and the supervisor acknowledging the transaction. He said the defendant was there in December 2018 and January 2019. In December 2018 he said he had a conversation with Erika Wilkins who was assistant HR Manager at the time. As a result of the conversation he spoke to Corporal Cuffy and made a report.
- [10] Under cross examination the witness said he did not have a written document of the refund policy. He agreed he did not give a copy of the policy to Officer Cuffy or to the supervisors at his establishment.
- [11] He agreed he did not produce to the police a report detailing when last the system was maintained by the IT personnel. He said the "POS" had various levels of access. He agreed with Counsel that the "POS" at the end of day produces several documents. It was his evidence under cross examination that the "POS" documents identified the sale transactions for that day.
- [12] He disagreed with the suggestion that at the end of the shift the cashiers would present their tills and a print out to the manager or the supervisor. He said the supervisor was to authorize the system to present the till and that the supervisor and cashier work together to do this. He said they would not be aware of a shortfall or irregularity in the till at that time. He said he would not be able to say when the cashier and supervisor would check the takings.
- [13] He did not produce to the police any documentation to show or say when the system was maintained. There was no re-examination.
- [14] The next witness was Erika Wilkins. She was a former employee of Chase Distributors Limited having worked as an assistant floor manager. Some of her duties were to walk the floor, report on daily transactions, set schedules and overlook cashier register reports.
- [15] She said the reports were generated on a daily basis through the computer. The reports were also generated at the end of a cashier's shift. She said she was fairly new in the role in December 2018 and she said she was getting accustomed to the various reports that had to be generated.
- [16] The witness indicated that the policy regarding refunds was that the customer had to present a receipt which should not be older than 7 days. The customer would explain why they wanted to return the items. Once the explanation was valid the supervisor would authorize the cashier to go ahead with the transaction. A receipt would be generated from the computer, the name of customer, the item refunded and the reason for the refund. It would also carry the name of the supervisor, her code and signature of supervisor who gave the approval. She indicated that the cashier would keep that slip. The customer would get a receipt with the word "**refund**" printed on it.
- [17] She also testified that the supervisor would be overlooking the cashiers, two or three on the morning shift, evening and maybe two in the afternoon depending on how busy the floor was. It was her evidence that the supervisor would be overlooking to make sure everything was running smoothly. She said they could view the shop floor from afar.

- [18] Her testimony was that a supervisor was to go close to the cashier when authorizing a refund, to make sure the transaction was done correctly. Then the supervisor would approve and sign the slip.
- [19] The cashier would scan the item, put in the refund, and ask the customer if its cash back or item back. The supervisor should be there to authorize the transaction. A receipt would be generated showing the items being refunded, reason and supervisor's approval. That slip would be kept by the cashier. Three slips would be generated 1) receipts, 2) slip with name or points and 3) approval.
- [20] She said that in the absence of a supervisor a cashier should not able to conduct a refund. However, she indicated that nothing was in place to prevent them from carrying out the refund. There was a card that the supervisor had and the transaction could not go through unless the card was used.
- [21] The "card" referred to was a card that the supervisor would hold and scan to the said to the "POS". The transaction could not go through unless the supervisor's card was swiped. She indicated that one could override this via a code.

Codes

- [22] The witness said that when the supervisor training had been passed a supervisor's code would be created-4 digits of your choice. That would be attached to a card but if you did not have the card one could enter one's digits into the system.
- [23] The witness testified that while getting familiar with the system, it was busy in December. She said that she started to work there on 3rd December, 2018 so she did not get to get familiar with the system until in January 2019. On or roundabout 16th January, 2019 she said that she went to a funeral and was absent from work. She said that on the next day while looking in the system pertaining to refunds, she saw that refunds on a particular date were high meaning that the money dollar amount was high. She said that she looked at the previous day and saw it was high also. She decided to contact the financial controller at the time and had a conversation. As a result of that conversation she collected paperwork and printed a report.
- [24] She indicated that at the end of the day the cashier should have pieces of slips which were supposed to correspond with the overall total and she observed that this was not so. The slips and the refunds were not corresponding.
- [25] Having discovered this she said she "dug deeper" and saw more overall totals not the same as the overall total of the cashier. She looked to see what the top of the report meant and the meaning of the headings. She saw that when a card was used (a supervisor's) the system would give a

number and the name of the supervisor who approved the transaction. When a code is entered it is blank as no number is generated.

- [26] She testified that she looked and saw that the day she went to the funeral was the day her code was being used. That day she was absent and the fact that her code was used “alarmed her”. She said she saw other codes being used affiliated with persons who were no longer working at Chase Distributors as well as codes used for persons who were also absent on that day.
- [27] She testified that she brought this discrepancy to the boss’ attention. She spoke to a police officer named Senior Sergeant Cuffy. As a result of that conversation she printed a report of the information and photocopied it. She indicated that she put her signature on the paperwork. If she were to see them again she would be able to identify via her signature. She knows the defendant as a cashier at Chase Distributors.
- [28] She said she came across the defendant’s name in the documents that she generated. During her testimony she was shown a series of documents and these were entered into evidence after she identified her signature. First document - till status “**EW 1**” generated at the end of the cashier’s shift. The cashier’s number and cashier’s name was Janellee Jackson, the date and time it was generated, how many refunds completed on that day and how many voids. The voids signify if an error was made. On the Till Report the witness explained that it showed loans (float), cash collected, credit card transactions, cheques, frequent shopper amounts and US dollars collected. All exhibits refer to cashier Janellee Jackson. The exhibit tendered as “**EW 2**” – this document pertained to cashier Janellee Jackson. Exhibit tendered as “**EW 3**” - Cashier Refund Report- showed items refunded, total, cashier’s name, supervisor’s name, description and date.
- [29] The witness said she highlighted sections on the documents because the amount on the till status, pieces of slips that were supposed to correspond, were absent. She said she did not see any slips that corresponded with these transactions. She said the information on the document showed the date, till, transaction number, description of item, code for the item (bar code) department, supervisor’s name. She also said she did not see any manager’s code attached to the highlighted section indicating that no card was swiped. She said where the manager’s card was being used there was a code present.
- [30] She testified that on 29th December, 2018 Ms Atiya Bass was absent from work and yet her code was used at “POS” used by the defendant. Ms. Bass worked in purchasing but helped out as a supervisor when they were short staffed.
- [31] On 5th, 6th, 8th, 10th, 11th, 12th, 16th 17th and 18th January, 2019 – no slips were presented for the refunds and Miss Bass’ name appeared as the supervisor. She said that she never authorized any refunds for those dates and even further stated that she never authorized any refunds without the proper documentation being presented.

- [32] It was her evidence that on the Refund Report – the cashier’s name was there being Janellee Jackson but no corresponding slips were presented.
- [33] The Report has a start date 3rd December, 2018 to 22nd January, 2021. It was pointed out to her that there were multiple transaction entries with the same number but she was not able to explain that which were highlighted.
- [34] No description and no bar code were present for the items refunded. Those items not highlighted had the corresponding refund slips. She said she also observed that where Davina Sanford’s name appeared, that no corresponding slips were found for those transactions. The said cashier refund report was tendered as “**EW4**”.
- [35] A report was given to Senior Sergeant Cuffy relating to cashier Mr. Etsy Solano for 3rd December, 2018 to 23rd January, 2019. She indicated that this report was generated to show the amount of refunds generated by this cashier for the period of the offence. That report was tendered as “**EW4**”. His total refunds for that period were \$353.00.
- [36] The witness was shown a report for cashier Britney Bunche and this report was tendered as “**EW5**”. She indicated that this report was produced and handed over to Senior Sergeant Cuffy... She indicated that the highlighted section represented the suspected fraudulent transactions where no slips were found for the refunds.
- [37] This exhibit that was tendered as “**EW 6**” and related to cashier Refund Report for Melissa Harris 3rd December, 2018 to 22nd January, 2019. On “**EW 7**” Cashier Refund Report for Joanne Andrew – 3rd December, 2018 to 22nd January, 2019. The total refunds for this cashier were \$1,441.78 for the period 3rd December, 2018 to 17th January, 2021.
- [38] On the Cashier Refund Report that was exhibited and tendered as “**EW8**” the cashier was Janelle Frederick for the period 3rd December, 2018 to 22nd January, 2019. The total refund figure was \$1,232.24.
- [39] Exhibit “**EW9**” was collectively tendered pertaining to Trainee Ferrol, Shante Thomas, Lynika Lee, trainee Stayzer for the period 3rd December, 2018 to 22nd January, 2019 was shown to the witness and she said she could find the corresponding slips for these transactions. She indicated that these reports were printed as a comparison to the reports of the defendant’s.
- [40] When the witness calculated all of the transactions, where there were no corresponding slips, no supervisor present or supervisor authorization by a supervisor who was absent or no longer working at Chase, the grand total amounted to **\$10, 582.95.00**. The indictment was later amended to reflect this figure. She said all transactions highlighted did not have a description, or a bar code. However the transactions not highlighted on the documents she was able to find the corresponding refund slips.

- [41] Under cross examination the witness was shown “EW 1”. She said in regards to “EW 1” only one person generated the receipt and the defendant had not signed it. She agreed that there was no time on the sheet showing the time that the refund was made.
- [42] She said she prepared a Cashier Refund Report which was exhibited and tendered as “EW 2”. At the time there was a manager named Miss Atiya Bass.
- [43] She said that 3 refunds did not have receipts as shown on exhibit “EW 1” and she said that the amount of refunds she received on 3rd December, 2018 was 6 in total.
- [44] It was put to her by defence counsel that when the defendant presented her till on 3rd December, 2018 she was not present. She said that the procedure would be that they would go into the deposit room and a supervisor would be present while the money was calculated. She said it was the supervisor’s responsibility to sign off on it.
- [45] When asked who was the supervisor on the report for the 3rd December, 2018, the witness stated she did not know who the supervisor was. It was her first day. It would have been on her worksheet. She did not know what time the defendant concluded work that day. The Cashier Refund Report (CRR) was prepared on 24th January 2019.
- [46] The witness agreed that on 4th December, 2018 the defendant did 5 refunds. None were legitimate. She thinks she was at work on that day. The defendant would have presented her till and the manager would have signed off on it.
- [47] The witness said that the defendant never presented any till to her and that there were other supervisors and managers.
- [48] In the deposit room there was a human resource person and a financial controller in the room. If there is a short fall in the till, the cashier’s worksheet was to be sent up to the accounts department. If a customer returns a box of cornflakes, if there is a request for a refund or item replacement there were procedures to be followed. If a customer wanted an exchange one would still have to call the supervisor. She said on 6th December there were several refunds amounting to over \$400.
- [49] The cashier’s shifts were 7am to 2:45pm, she was not sure of the breaks but lunch breaks depended on the amount of cashiers currently working. There would be two breaks plus lunch on the 10:00 a.m. 7:00 pm shift also on 9:00 a.m. to 6:00 pm and 2:00 p.m. to 10:00 p.m.
- [50] The witness said that she worked there one year and three months. When the cashier goes on breaks, if it’s a long break sometimes other cashiers would fill in for others and also supervisors. The supervisor who verified if the information was correct before it went up to the accounts. She agreed that Chase had a technician in the USA.

- [51] She testified that a cashier could log on and only certain supervisors could log on and check the schedule and other activities. She agreed that she had not produced an audited account. She also agreed that no accountant verified the report given to Senior Sergeant Cuffy. Chase Distributors had cameras at the time but she did not recall if she reviewed any transactions when the defendant was working.
- [52] The witness said she never saw Ms. Jackson take any money from the till and put in her pocket and she agreed that she never saw the IT person come and fix anything on the system while she was there.
- [53] The witness confirmed that a cashier code could not be used to enter a refund and she agreed that she did not ask Janellee what she did with any of the slips. She said she never got a chance to do so.
- [54] She agreed that without a reward card no name would come up on the receipt. Rewards were carried on her name and she was at a funeral. She did not ask the defendant about it.
- [55] Under re-examination the witness said that the Cashier Refund Report was created by putting her personal code in to the "POS" get generate reports from the system.
- [56] The witness, Ms. Atiya Bass testified that she was a purchasing clerk and had been working at Chase Distributors for ten years as a purchasing clerk. She said that in 2019 she was conducting purchasing but that she also acted as a purchasing supervisor. She indicated that she purchased local as well as international of stock. She indicated that when she filled in as a supervisor she was familiar with the refund policy. She corroborated the procedure as set out by the previous witnesses.
- [57] She said that the system produced a receipt and that receipt is given to the cashier. She testified that to process the refunds the system required a manager's code. The code is entered by card or punched in.
- [58] She said that she had a conversation on 9th May, 2019 with Senior Sergeant Cuffy. As a result she said he showed her four different dates, names and transactions that were done and manager codes. When she looked at it she said that she saw approvals for four different days but she was not the supervisor on those days. The approvals were for 4 different days but she was not the supervisor at the time on any of those days.
- [59] The exhibit tendered as "EW 3" was shown to the witness and she said that her name appeared on the 23rd, 24th, 29th and 31st of December, 2018 but that she was not a supervisor on those dates. She never gave anyone permission to swipe or use her card on those dates. She testified that she knew the defendant as a cashier and she was a supervisor. In 2019 she had known her for some years. She had worked together with the defendant and she, the defendant was familiar with customer reward cards.

- [60] It was her evidence that she delegated the defendant to deal with customer reward cards when this reward system just started. The defendant would be tasked with entering new customer's details into the system. The customers details would be verified with some form of ID and the manager's code would be needed to enter the system. This person would have access to manager's codes.
- [61] Under cross examination Ms. Bass said that at Chase Distributors there was a duty manager or supervisor. She said that the duty manager was responsible for delegating work to the cashiers and packers. The duty managers have shifts as well as the supervisors. She said that Senior Sergeant Cuffy showed her documents on 9th May, 2018. She said she was not the supervisor at the time but had been promoted to purchasing clerk.
- [62] She could not recall who were the supervisors or cashiers then. The schedule would indicate who was working as a manager or supervisor on a particular date. She did not make any enquiries about who was the supervisor on the days where her name appeared. She said that was not her job to make enquiries and that her job was that of purchasing clerk.
- [63] She said she worked with the defendant the whole shift and she would have checked the defendant's till and checked the credit cards, cash etc. at the end of the shift. She agreed that the defendant would have handed over her till to her in her capacity as supervisor. The system would show voids and refunds appearing on the till status report and then she would hand it in to the accounts department. She said further that the supervisor's duty was not to check the refunds but the accounts department was to do that.
- [64] It was her testimony that the accounts department did not contact her at any time to say that the till status report was incorrect. In relation to the reward card system she testified that the person in charge had access to the manager's code. She said the defendant was fitting in the customer reward system. She said cashier's codes could not be used for the reward system. The reward system was a separate system from the supervisors' system. She said whatever information was put on the managers system went onto the cashiers' system. She agreed that the manager's authority was above the cashiers' and supervisors'.
- [65] The witness indicated that there were a lot of managers and supervisors at Chase Distributors for different departments.
- [66] She explained that the reward card system was a system that customers were given points for shopping. To redeem ones points a manager had to be called to authorize the transaction. The defendant had the authority to do the redemptions, a supervisor was not needed. She had the authority to do the transaction as long as the customer had an ID. All managers selected their own codes and these codes were supposed to be secret. The codes were stored in the system. Because she was given the responsibility of customer cards the defendant was given a manager's code and she also knew one or two of the other manager's codes. She did not have a card.

- [67] The system was not monitored daily. She said she had never seen the defendant punching in anyone's code. Never saw her take any money and put it in her pocket. She did not have access to other manager's codes. She didn't give her access. She does not know who gave her their code.
- [68] Under re- examination she said that the defendant had access as she was dealing with the customer redemption system.
- [69] Audlyn Duke was a former employee at Chase Distributors employed as payroll officer and she was tendered for cross examination. She testified to being responsible for the payroll and clock in data which was computer generated. She said she sometimes did manual clocking in. She said timesheet managers did not exist and that there was only one manager at the time, Mr. Desmond Chase. She said that the floor managers were down in the supermarket and she was up in the accounts department. She said the floor manager was the same person as supervisor. The company did not have a duty manager.
- [70] The witness Sherika Francis testified that she was a former employee of Chase Distributors. She left the company as far back as 2016. She was shown a document which showed that her code had been used to authorize refunds even though she was no longer employed by Chase Distributors.
- [71] The witness Davina Sanford verified the refund process corroborating the evidence of Miss. Wilkins and Miss. Bass. However she did refer to a form which was to be signed off by the supervisors which was never entered into evidence. Ms. Sanford also indicated that when there was a refund or the exchange was small in nominal value, no supervisor's authorization was obtained. Significantly this is the first time such a form was mentioned throughout the trial.
- [72] The next witness was Constable 818 Gary Martin and he too was tendered for cross examination. He testified that he typed the interview questions and answers with Ms. Janellee Jackson. He said that during the interview the defendant gave answers. He couldn't recall if she denied she was involved in larceny and he could not recall if she was given a break. No documents were put to the defendant during the police interview.
- [73] Senior Sergeant Cuffy was attached to Johnson's Point police station at the time of the incident was the investigating officer. On 17/01/18 Desmond Chase the owner and manager of Chase Distributors made a report to the police station. As a result of the report the witness went to Chase Supermarket and met with assistant floor manager Ms. Wilkins. He had a conversation with her and she showed him cashier refund reports, spread sheets and cashier receipts. He said he examined them and left. Ms. Wilkins returned certified copies of the documents and he signed them and kept in his custody. He said that if he were to see them again he would be able to identify them via his signature.
- [74] He said that on 26th January, 2019 at 8:00 p.m. he met the defendant at the St. John's Police Station where he said that he identified himself to her and he put the allegation to her. He said that

the allegation was that while she was employed as a cashier she stole EC10k by performing unlawful returns and he arrested her on suspicion of the offence. He said that on Monday 28th January, 2019 8:00 p.m. while on duty at CID in the presence Constable 818 Martin, Michael Jackson brother of the accused and attorney Lawrence Daniel, he reminded her of the report and that he cautioned her. He said that he asked her a series of questions which she answered and Constable Martin typed the questions and answers. At the end of the interview he said that he asked her if she wanted to read it herself. He turned the laptop in the position she was sitting and she read the interview. He asked her if the answers were true and correct and she said yes. Later he printed the interview and the defendant signed and Constable Martin signed as witness. On the same date he arrested and charged cautioned her and she made no further reply.

- [75] On 23rd May, 2019 at about 2:30 p.m. he said that he went to Chase Supermarket and upon his arrival he met with Ms. Duke the payroll officer and had a conversation with her and made a request and then left. He testified that on Monday 27th May, 2019 at 2: 30 a.m. he returned back to Chase Supermarket and met with Ms. Duke and had a conversation and she handed over work schedules and time card punch sheets. She initialed the documents and he left. At the station he examined the documents.
- [76] Under cross examination Senior Superintendent Cuffy said that at Chase Distributors that he did not ask Ms. Wilkins when the cashier submitted a till report what document the supervisor signed off on. Exhibit tendered as “EW 1” was shown to him and he agreed that he did not ask Ms. Wilkins who the person who verified the information submitted was.
- [77] He agreed with Counsel that did not enquire whether or not the manager or supervisor was re-using Sherika Francis’ card. He said he examined the documents closely and recognized that for other cashiers the names of persons like Sherika Francis who had not worked there for years was being used. He noted that her name featured even though she no longer worked there. Melissa Harris’ Cashier Report exhibit tendered as “EW 6” was shown to him for him to refresh his memory. He said he did not interview anyone who could confirm that they asked the defendant about her till refund receipts. He agreed with Counsel who put it to him that there was no evidence that she removed money from the till or from her place of work. He further stated that Mr. Chase did not provide him with any audited accounts as to the money lost, but they gave him a spread sheet which indicated the money was missing. He agreed that no written policy was provided by the company to him.
- [78] At the close of the Crowns case Counsel made a Submission of No Case to Answer. The submission was not up held by the Court. The defendant was given her 3 options and she opted to give sworn testimony. She was also reminded that she could call witnesses if she chose to do so.
- [79] The defendant was sworn as Ms. Janellee Jackson, of Green Bay. She said she used to be employed as a cashier at Chase Distributors. In July 2012 she started as a bagger and was promoted to cashier. She then worked as a cashier for three years or so.

- [80] She indicated that as a cashier she would cash the items, pack the bags, and give change. She would collect her float from inside the cash room then go out on the floor and go to her register. She said she would go to any register. It was her testimony that upon arrival at work she would clock in, wait for the supervisor, collect the float and come back out. The shift hours were 7am-3pm, 11am-8pm, 2pm-10pm or 10:30 p.m.
- [81] A cashier would punch in her password. She said the company would generate the password. It was her testimony that one could only access the point of sale via the password. She said that on the 7am-3pm shift break time would be 15 mins, A 1 hour break at 10 am. On the 15 min break the cashiers would leave their station and go and eat. She indicated that on a short break the till is left without her logging out. On a 1 hour break someone else could come and use the register. No one relieved her on the 1 hour break.
- [82] She testified that she always had a supervisor when it came to refunds. The customer would go to cashier or to the supervisor and make a complaint then the supervisor would act depending on the nature of the customer's complaint. She explained the refund procedure-: *"customer will come with the item; supervisor would ask if they want an exchange, or cash back. It is an exchange no supervisor action. If you do a refund the receipt with will be generated. Majority of the time nothing happens with the receipt"*. She said she kept the receipts and gave it to the supervisor at the end of the shift". It was her testimony that the supervisor would take the till and generate a till status report and she said *"they don't show us the receipt"*. She said she would then *"sort out the money, count off and sign off on everything. The Till Status Report would be printed by her and then they would go into the cash room. The pan is open and the cashiers would enter the cash room as a group"*. She indicated that the cash room had a camera. In the cash room there would be a verification of the cash and then credit cards, frequent shopper and US dollars.
- [83] She would then sign off on the documentation, and give everything to the supervisor. No supervisor had advised her ever that her funds had been incorrect or excessive or over the amount. No one from accounting department had told her that there were missing receipts.

Customer Frequent Shopper Cards

- [84] The defendant described the customer reward system. She explained that she would enter the cards when a customer was signing up. A supervisor would sign in; enter the card on the system. She indicated that she had access to the customer card section. She said she did not have access to managers' nor supervisors' cards nor codes. She acted as a supervisor and as an understudy for a month or two. She said she no access to any codes only a supervisor card.
- [85] She said heard Ms. Wilkins' testimony and had never seen a cashier refund report. She said she was not aware of the report nor the missing slips and no one ever told her about that. The first time she saw the report was at the police station. The witness Ms. Wilkins said that transactions and

refunds were not authorized, but she was not aware of refunds or shortages. She said she was not aware of any supervisor's code used by her.

- [86] She said she did not take the money. No one approached her or informed her money was missing while she was a cashier.
- [87] Under cross examination she said when she left her till she did not log off and that no one filled in for her during the ten minutes break. She also said that she did not get to see the till status at the end of the day. She said she heard when the supervisor said she brought the till and the till status report. She said she would be the one to count off and then she would ask the supervisor if that is what was reflected on the till status report. At the top of the till status report there are refunds she said she saw it when Senior Sergeant Cuffy did the interview and that was the first time she was seeing it. It was her evidence that the till receipt did not have every single transaction that the cashier carried out on it.
- [88] Under cross examination she said the credit cards, cash and loans would be checked. The supervisor would check the refunds off and check the off against the case. When working in the frequent shopper a supervisor would sign in. Ms. Bass said a number of codes would have been given...the defendant disagreed. She said she was training and she had no access to codes and no access to the back end as a supervisor. But she heard when Ms. Sanford said that she did have this access.
- [89] The following suggestions were put to her:-
- that she did have access to supervisors codes- disagreed
 - the access to the "POS" was gained by using Ms. Bass' code and used to do fraudulent transactions-disagreed
 - Miss Wilkins' code was also used to do fraudulent transactions- disagreed
 - that she used the card assigned to Sherika Francis to carry out fraudulent transactions-disagreed
 - For all the highlighted refunds she provided no refund slips as seen in "EW 3". She said she provided slips for all transactions.

Analysis

Circumstantial Evidence

- [90] In their opening address, the Crown submitted that their case is based wholly on circumstantial evidence. They contended that there is sufficient evidence on which Ms. Janellee Jackson's guilt can be proved, in whole or in part, by the drawing of certain inferences from circumstantial evidence. Sitting as a Judge Alone it is my duty to analyze the circumstantial evidence, distill the facts and ensure that this evidence satisfies the element of the offence.

What the Crown has to prove?

- [91] The Crown's burden is to prove beyond a reasonable doubt that Ms. Janellee Jackson stole the money and that she acted dishonestly, whilst working as a cashier and in the course of her employment. They must also prove that the money belonged to another.

Discrepancies and Omissions

- [92] Defence counsel posited that Ms. Erika Wilkins noticed that her card had been used on the day that she attended a funeral. He pointed out also that she never at any time confronted the defendant about her code being used on that day. Neither did she point out to the defendant that her receipt slips were missing. She never pointed out as a supervisor to the defendant that her till was short and she never verified the till receipts. How could she not verify cash, loans and credit cards? Ms. Wilkins did not go to the accounts department to report the discrepancies either.
- [93] The Court asks itself if the Crown's case is diminished by this perceived negligence highlighted by defence counsel, bearing in mind Ms. Wilkins said that she was new on the job. She admitted she did not check the returns/refunds. Indeed the Court had no documents for 3/12/18 which could tie any supervisor to the form referred to by Ms. Sanford. An important omission indeed.
- [94] Much criticism can be made of the way the establishment was run in relation to its supervisors and cashiers. Ms. Sherika Francis' card was being utilized by someone even though she had left the employment since 2016 and apparently never cancelled by management. Surely this is an indictment on the part of the management of Chase Distributers and left their system vulnerable to unscrupulous conduct by its employees who obviously saw the gap and exploited it.
- [95] Ms. Wilkins in her testimony clearly stated that although she was new in the post of supervisor, she noticed certain discrepancies which she said alarmed her. She indicated that on the day she was absent from work, her code was being used to authorize refunds. She also said that the cashier at the time was the defendant. She decided to "dig deeper" and she discovered that there were authorizations from a supervisor named Sherika Francis who no longer worked at Chase Distributers. The cashier till used was that of the defendant's. Defence counsel has posited that Senior Sargent Cuffy arrested the defendant on suspicion of larceny but that he failed to interview any supervisor who received a till from the defendant to verify that refund receipts were missing. Further they highlight the fact that both Ms. Wilkins and Miss. Bass admitted that the establishment had cameras and yet the Crown did not submit any CCT footage to show their client taking the funds. In addition to this omission they cite the fact that the police failed to search the home of the defendant.
- [96] Defence counsel also noted that the evidence led shows that the cash room also had a camera, however no one was called to give any evidence that they saw the defendant removing money and that the gaps in the Crown's case are too numerous for the Crown's case to be reliable.

- [97] The Court agrees with the defence that these omissions would have strengthened the Crown's case. However the Court also views these discrepancies when taken together, form evidence from which the Court can reasonably infer that the refunds were conducted by the defendant, using a supervisors code (without their permission) and therefore unlawfully taking the refunded monies for herself. The absence of CCT footage or evidence of a search of the defendant's home are regrettable. But it is the Court's view also that it is immaterial that no one actually saw her "pocketing" the money but it is enough to establish that the refunds were done fraudulently by the defendant and that when doing so she was acting dishonestly. Defense counsel made the point that no audited records were presented to the Court. I agree with him that this would have helped the Crown's case, but the absence of audited records in the Court's mind is not fatal to the Crowns case.
- [98] The Court is of the view that Chase Distributors was poorly run and that accountability was lax. The demeanor of witness Miss. Bass was also very telling as when she was asked if "*she ever saw the system being maintained*", she smirked before she answered "*not as far as she knew*". In Jamaican parlance, this supermarket was run like a "patty shop". One of the most vigorously contested issues was the competency of the computer system. The IT person resided in the United States and no evidence was put before the Court to say how and when the system was maintained. The Court was reminded by the Crown that in the absence of evidence to the contrary, there would be a presumption that the system was in good working order. Again this does not detract from the fact that the defendant had the opportunity to perform refunds using other person's codes without their permission and in fact took the opportunity to use the code of a person who left the establishment as far back as 2016 whose card was not cancelled. As a matter of inference, the refunds were made using a supervisor's code by the defendant on numerous occasions. These codes in some circumstances were used when the supervisors were absent as in the case of Erica Wilkins. The refunds were made at the defendants Point of Sale till. The Court can reasonably infer that these refunds were conducted illegally and in violation of the refund policy of which the defendant admitted she was aware.

Demeanour

- [99] Lord Bingham described demeanour as the sum of a witness's 'conduct, manner, bearing, behaviour, delivery, inflexion'. In short, 'anything which characterizes his mode of giving evidence but does not appear in a transcript of what he actually said'¹. So demeanour is about the language of the body rather than words – emotion about lying that is translated into visible or audible signs. Although Lord Bingham and some other distinguished judges have cautioned against too great a dependence on demeanor in reaching assessments of credibility, most judicial decision-makers accept that it is an important element in the finding of facts and, of course, part of the point of having witnesses giving evidence orally.

¹ Onassis vs. Verottis (1968) 2 Lloyd's Reports, pg. 5

- [100] The Court has observed the demeanour of all of the witnesses. The Crown witnesses have come across as honest and forthright and I have had no difficulty in believing their testimonies. They all stood up under the vigorous cross examination by defence counsel.
- [101] In relation to the defendant when asked certain questions she appeared evasive and reticent. Her voice became almost inaudible when giving her evidence in chief. For example at one point her counsel had to be admonished for speaking too loudly to his client as the Court was unable to make out what she was saying especially when she was being questioned about the refunds. The Court observed a level of hesitancy when she was being cross examined.
- [102] The Court also noted that during her police interview the defendant admitted that sometimes exchanges were conducted without the authority of the supervisor even though this was not the company policy. When asked if any supervisor had ever asked her to conduct a refund without the customer being present she said she could not recall. This answer was very telling as she had already indicated the proper refund protocol. She also indicated that she had in the past been approached to conduct a refund when the customer was not present and no slips had been presented. This was her unchallenged testimony and was viewed as telling by the Court.
- [103] Under cross examination she said that for all of her transactions she presented slips for the refunds. This is in variance with the testimony of Ms. Wilkins and not credible viewed in light of the documentary evidence that was put to her. She said that she never saw the till report until it was shown to her by the police; however she did not seem surprised at the high number of refund transactions. Significantly also, when the allegation was put to her in the interview she said that she had nothing to say.

The Defendant's Previous Good Character

- [104] The defendant is of good character and unknown to the Court. The Court therefore has to direct itself in the following terms. As is well known, the good character direction contains two limbs: the credibility direction, that a person of good character is more likely to be truthful than one of bad character; and the propensity direction, that a person of good character is less likely to commit a crime, especially one of the nature with which he/she is charged, than a person of bad character.
- [105] The Caribbean Court of Justice delved into this in Court of Appeal decisions from Belize namely **Gregory August and Alwin Gabb v R²** Justice Wit had this to say "As far as the "good character" defense is concerned, it is unnecessary for me to deal with it as I have already on substantive and genuine grounds concluded that the conviction of August is unsafe. More fundamentally, however, I am of the view that this defense is quite artificial and, frankly speaking, grossly overrated. To start with, it is a misnomer. The fact that a defendant has a clean criminal record does not say much, if

² CCJ Appeals Nos BZCR2015/001 and BZCR2015/002

anything at all, about his “character” (although this might be different with a “bad” criminal record). Surely, a clean criminal record alone does not mean that the defendant is credible. At best, it might be a minor indication in combination with more relevant and weighty factors. But that is as far as it goes. A clean record may be a somewhat stronger indication that the defendant does not seem to have a propensity to commit crimes or certain crimes but, depending on other more important aspects of the case, it could just mean that he was smart enough to stay out the hands of the police. I would assume that it is only in a very rare and very close case, that the defendant’s clean record would make any impact on the final decision of guilt or innocence”. I adopt this learning wholeheartedly.

- [106] In looking at the evidence in the case the Court is guided by the learning of Lowry J in the Northern Island case of **R vs. Thompson**³ where he said at page 74 of the case “....it is the duty of the judge when giving judgment in a trial under the 1973 Act that...he has no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is as in a jury trial to instruct laymen as to every relevant aspect of the law or to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision for others. His task is to reach conclusions and give reasons to support his view and preferably to notice ant difficult or unusual points of law in order that if there is an appeal, it may be seen how his view of the law informed his approach to the facts”.

Conclusion and Verdict

- [107] The evidence of Miss Bass was that the defendant was given codes because she was entrusted to work on the customer loyalty cards. So it was established in her examination in chief and further reinforced under cross examination that the defendant had access to manager’s codes. Miss Bass says that she never saw the defendant punch in any manager’s code nor take money from the till. However, the Court believes that It can reasonably be concluded that taking the Crown’s evidence as a whole, the testimony of the witnesses and the defendant’s responses at the interview coupled with the defendant’s demeanor the Court finds that the Crown has proved its case beyond a reasonable doubt and that Ms. Janellee Jackson is guilty of larceny by a servant.
- [108] This case was adjourned for the Probation Department to carry an investigation and to prepare a Pre-Sentence report to assist the Court in its sentencing phase. The defence was also given the opportunity to call a character witness and put forward a plea in mitigation. The defence called 1 witness namely Ms. Elfrida Henry who said that she has known the defendant for 12 years and found her to be kind and of a quite disposition. In his mitigation counsel highlighted the defendant’s good character and her quiet nature. He indicated that she graduated from the Princess Margaret Secondary School and after that the Antigua College and thereafter she trained as an Emergency Service Worker moving on to Chase Distributors. Based on the probation report

³ Northern Island Law Reports, 1977, 74

the defendant is either disorderly nor disruptive and is caring and helpful with a quiet disposition. He indicated that this incident has been a blot on her record and an embarrassment to the family and it will serve as a bar to her gaining employment in the hospitality industry or in any work where she will be placed in a position of trust. Counsel says that during her time on remand she has had time to reflect on her actions. She has expressed to remorse.

The Law

- [109] The offence of larceny by a servant is governed by **section 20 (1) (a) of the Larceny Act, Cap. 241 of the Revised Edition (1992) of the Laws of Antigua and Barbuda**. Which provides for a maximum sentence of seven (7) years imprisonment.

Sentencing

- [110] On the issue of sentencing, this Court is now guided by the **Sentencing Guideline of the Eastern Caribbean for Offences of Dishonesty reissued on 30th July, 2020**. The guidelines illustrate how the guidelines are to be applied to the present case:-

First Stage

The first stage involves considering consequence by assessing the harm caused by the offence. This consequence may be demonstrated by a number of factors. In the instant case, the stolen money received by Ms. Jackson amounted to \$10,582.95 this offence may easily be classed in **category 2 - medium** in this first stage.

Second Stage

This stage addresses the seriousness of the offence by assessing the culpability of the offender. In this case the defendant abused her position of trust and there appeared to be some degree of planning. Consequently, the appropriate category may be **level A– high**.

Third Stage

At this stage the relevant calculation will be done using the grid provided. For an offence which is category 2, level A, the starting point is 60% of the maximum term of imprisonment. This would mean that for this offence, the starting point would be approximately 4 years imprisonment. The general range of the sentences for this category identified in the first and second stage would be between 3 years and 5 years imprisonment.

- [111] The prosecution helpfully put forward that the following are the aggravating and mitigating factors in relation to the offence:

Aggravating Factors

There are no further aggravating factors in relation to the offence and there are no factors in mitigation.

- [112] The Crown further submitted that the following are the aggravating and mitigating factors in relation to the offender:

Aggravating Factors

There are no aggravating factors in relation to this offender.

Mitigating Factors

- i) She is not previously known to the court and is therefore of previous good character

- [113] The Crown helpfully reminded the Court that despite the sentencing guidelines, the Court could also be guided by previously decided cases from the jurisdiction. It has for many years been the practice of the Courts in such matters involving theft by employees whether they are charged for the offence of larceny by a servant or embezzlement, that the Court orders restitution and a fine if the defendant has the means to pay same. The Crown helpfully provided authorities for the Court's consideration.

- [114] In the case of **The Queen v Dario Francis**⁴ the defendant was employed at the Antigua Commercial Bank and stole close to \$250,000.00. At the date of sentencing (27th June, 2014) he had already made a substantial repayment to his former employer. The Court therefore ordered restitution in the sum of \$36,000.00 which was the balance and he was also fined \$60,000.00.

- [115] Also, in the case of **The Queen v Rowan Thomas**⁵ the defendant stole \$71,600.00 from his employer. On 22nd April, 2016, he was ordered to pay restitution in that amount and he was also fined \$15,000.00.

- [116] In **The Queen v Bridgette Thomas**⁶, the defendant was a clerk at a gas delivery company and she embezzled \$74,154.00 by falsifying receipts. She was sentenced on 27th February, 2015 to pay restitution of the full sum and also placed on probation for one year.

⁴ ANUHCR2014/0015] (unreported)

⁵ ANHCR2014/0125] (unreported)

⁶ ANUHCR2014/0127](unreported)

- [117] Finally, in the case of **The Queen v Althea Frederick-Dinard**⁷, the defendant was employed as the executive officer at a small hotel. She embezzled over \$100,000.00. She was sentenced on 12th December, 2019 to make restitution of the stolen sum.
- [118] In all the above cases there were various default sentences attached for failure to make the ordered payments.
- [119] In applying the aforementioned cases and taking into account the plea in mitigation, the mitigating factors attaching to the defendant's personal circumstance the Court views the defendant as an excellent candidate for rehabilitation who will benefit from the guidance and intervention of the Probation Department. Based on the submissions of counsel the Court orders that the defendant pays restitution to Chase Distributors. She is to pay full restitution in the sum of \$10,582.95. The sum of \$4,500.00 is to be paid forthwith, in default 1 year in prison. The balance is to be paid in installments of \$1,000.00 on the last working day of every month with the first installment being paid on 30th August, 2021. In default of any monthly payment the defendant will spend 6 months in prison. The defendant will return to Court on 17th January, 2022 for report. The Court also places the defendant on Probation for 18 months in default 6 months in prison.
- [120] The Court is grateful to the Probation department for its fulsome report to the Crown and the defence for its submissions in this matter.

Ann- Marie Smith
High Court Judge

By the Court

Registrar

⁷ ANUHCR2015/0124] (unreported)