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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

BEFORE THE HON THE CHIEF JUSTICE

ON THE 15TH AND 16TH JANUARY 1993

IND 33/92

REGINA V JAMES ORVILLE EBANKS

Mr. N. Levy for the Appellant
Mr. S. Bulgin for the Respondent

MALONE C.J. **JUDGMENT**

Mrs. Carolyn Clarke lives with her husband at West Bay. On the night of Wednesday the 8th July 1992 at about 11 p.m., Mrs. Clarke, having locked up the house with the assistance of her husband retired to bed. In the early hours of the morning of Thursday 9th July 1992, husband and wife awoke at about the same time and both left the bedroom. Mrs. Clarke found that the house was not as she had left it before retiring to bed. On checking the house she found open doors that had been locked and found pushed inward a wire frame to a window near to one of the doors. Mrs. Clarke also missed several articles that jointly belonged to her husband and herself and missing also was a car she had left parked on the driveway of her house. The keys to that car had been left on the kitchen counter after the house had been locked. Only the car and its keys were subsequently recovered. None of the foregoing facts are disputed by the accused and I find they prove beyond a reasonable doubt that there was a burglary of Mrs. Clarke's house by a person unknown.

I find it proved also beyond a reasonable doubt that at about 1:55 a.m. of the 9th July 1992 the accused was seen driving Mrs. Clarke's car on Eastern Avenue by officer Daniel Lowe. When officer Lowe turned around the police car he was driving to follow the accused, the accused did not accelerate and

drove on into the parking lot of Kirk's supermarket after officer Lowe had turned on the blue light of his car and its siren. Officer Lowe spoke to the accused with whom was one Christian.

It is at this point in the narrative of this case that conflict arises in the evidence. According to officer Lowe the accused told him:

"I borrowed the car from a friend in West Bay"

and when asked:

"What friend?"

He could not say. The accused on the other hand says that he told officer Lowe:

"I found the car in the Crown Rise."

That conflict I resolve by making the following findings. I believe officer Lowe that the accused did tell him that the car had been borrowed from a friend, and then could not name the friend from whom it had been borrowed. Officer Lowe was a witness who found difficulty in recollecting in an orderly manner the events that had taken place but I have no doubt as to his honesty. Had the car been borrowed it could only have been borrowed at most three hours before the accused met officer Lowe which renders unacceptable the accused's answer that he could not remember from whom he had borrowed it. I therefore do not believe that the car had been borrowed. Neither do I believe the accused when he said that he had found the car with the ignition key in it on a dirt track on rising ground known as Crown Rise or Birch Tree Hill. A short distance from his house. He tells that story for the first time when he gave evidence and it is inconsistent with what I believe he told officer Lowe whom I believe. Therefore I disbelieve what was said in evidence by the accused.

The findings made to this point disclose a burglary of Mrs. Clarke's home. They disclose also that within three hours of the burglary the accused was found in possession of the car that had been parked in the driveway to the burgled house.

The accused was also found in possession of the keys to the car and on two occasions has given false accounts of how he came to be in possession of the car and its keys. To my mind the Crown has on those facts proved beyond a reasonable doubt that the accused was the burglar and in the course of committing that offence stole the articles that have not been recovered. I reach that conclusion without considering the doctrine of recent possession as I have been urged to do by Mr. Bulgin as in so far as count 1 is concerned this is a case where there is direct evidence of the circumstances in which the accused came into possession of the goods that have not been recovered.

The 2nd count raises the question was there a theft of the car and the car keys? Unquestionably the car was taken by the accused and so were its keys as having found him to be the burglar, the keys and the car must have been taken by him. However, the question I have posed remains. It remains because cars are not infrequently taken to get away with stolen goods or for joy riding and with no intention of assuming the rights of the owner of the vehicle. Mr. Bulgin for the Crown has urged me to apply the doctrine of recent possession to the 2nd count of this case. That doctrine is no more than a rule of common-sense by the application of which guilty knowledge may be inferred. In this instance the facts disclose a burglary by the accused and the taking by him of the car and its keys in circumstances which plainly show he knew he was committing a wrongful act. They do not, however, plainly show an assumption of ownership. Nor to my mind can that assumption be inferred from his false statements which may as readily indicate consciousness of guilt in taking the car with an intention to permanently deprive the owner of it as in taking the car without such an intention. Those uncertainties are not resolved by the application of the doctrine of recent possession. On that evidence I am not sure that assumption of ownership has been proved. Therefore I am not sure that theft of the car and its keys has been proved. As the accused is entitled to the benefit of the doubt I acquit him on the 2nd count. I have

no doubt, however, that he took Mrs. Clarke's car for his own use without her consent. Accordingly by virtue of section 222A (2) of the Penal Code I can find the accused guilty of the offence recognised by subsection (1) of that section as he has been charged with theft.

In the result my verdict is that the accused is guilty of count 1 and of the alternative to count 2.

Sir Denis Malone

22nd January 1993.