

**IN THE CAYMAN ISLANDS COURT OF APPEAL**

**CRIMINAL APPEAL 18 of 2021**

IND. 73 of 2020

SC#02735 of 2020

**BETWEEN:**

**RUPERT JUNIOR SPENCE**

**Applicant**



**- and -**

**His Majesty the King**

**Respondent**

**BEFORE:**

**The Rt. Hon Sir John Goldring, President  
The Hon Sir Richard Field, Justice of Appeal  
The Rt. Hon Sir Alan Moses, Justice of Appeal**

Date of Hearing: 2<sup>nd</sup> December 2022

Appearances: Mr Keith Myers Kelly Myers for the Appellant  
Ms Candia James-Malcom, Office of the DPP for the Respondent

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**JUDGMENT**

**Transcript of oral judgment dated 2<sup>nd</sup> December 2022 and Approved for Release 11<sup>th</sup> May 2023**

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**GOLDRING JA, President**

1. The Applicant, having on 23 March 2021 been convicted by a jury in the Grand Court, seeks leave to appeal against conviction. The convictions in respect of which he seeks leave to appeal related to two counts of arson (counts 1 and 2), contrary to s.267(1) of the Penal Code, (2019 Revision). He was sentenced to concurrent terms of one month and 6.5 years imprisonment.

## **The facts**

2. In this application for leave, we can take the facts very shortly.

### *Count 1.*

3. On the night of the 13th of August 2020, a motorcar belonging to someone called Mr. Chambers was parked in front of the Rubis Gas Station on Walkers Road in Grand Cayman. It was damaged by fire. Assuming the jury was sure the fire was not accidental, as was the evidence of the fire officer, the sole issue was who was responsible.

### *Count 2.*

4. A little way down Walkers Road are some police offices in Windjammer Plaza. On the night of the 26th of August 2020, they were damaged by fire. Accelerant had been introduced into the building. When a fire officer arrived, there was the smell of petrol.
5. There were at least four origins of the fire. The sole issue again, was, who was responsible.

### *The Evidence against the Applicant.*

6. There was powerful evidence implicating the Applicant.

### *Count 1.*

7. The prosecution relied on CCTV evidence and inconsistencies within the Applicant's account, into which we need not go. He claimed had driven his sister's car to a place across the road from the petrol station because a fire had started and he wanted to see what was happening.
8. The defence submitted it was a weak case, that the fire may have been an accident, that the Applicant had no motive for setting the fire and that Mr. Chambers himself might have done so.

*Count 2.*

9. After the fire, DNA evidence was obtained from a red plastic container which must have contained the accelerant used to set the fire. The likelihood of it being the Applicant's DNA was assessed to be 120 trillion to 1. In addition to the DNA, the Crown relied on the fact that the Applicant lived a five minute walk away, that he was in the area as the fire was blazing, that as the firetruck arrived, he went into the petrol station, that he could be seen stamping his foot as though to get rid of some moisture and that he was seen to pump his fist in the air several times as though in triumph at his handiwork. Again, there were inconsistencies in his account.
10. The defence case was that the Applicant was at home working on his truck. As to the DNA, the defence relied on the expert evidence that it was possible that someone wearing gloves had used a can with the Applicant's DNA on it. The point also was made that it was not possible to say how long the DNA had been on the can.
11. The damage to the police premises amounted to \$158,000.00.
12. The Applicant did not give evidence at trial.

*The Grounds of Appeal.*

13. They were difficult to discern from the grounds submitted by Mr. Myers on behalf of the Applicant. He has now abandoned the application for leave in respect of count 1, not surprisingly, given it had no merit at all.
14. As to count 2, his submission to us, although not raised in the Grounds of Appeal or ever raised by counsel at trial, is that there was contamination in respect to the DNA evidence. Mr Myers bases that submission on one extract of the witness statement of the Crown's DNA expert, which Mr Myers had misunderstood. Without going into the detail, it became clear that although there were two swabs placed into one sealed container (about which Mr Myers was complaining), there was no question of one swab having contaminated the

other. Both swabs were from the same source, namely, the can. That was why they were stored together in the same container.

15. In short, there is no basis upon which to grant leave to appeal. We therefore refuse to do so.