

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN  
BEFORE THE HONOURABLE SIR JOHN SUMMERFIELD  
ON THE 23rd MARCH 1981

Cr. Appeal No. 4 of 1981

JENSEN EBANKS  
V  
REGINA

Mr. R. Alberga Q.C. instructed by Mr. O.L. Panton for appellant  
Mr. J. Furniss for respondent

JUDGMENT

The appellant appeals against his conviction  
for the offence of theft of \$31.00 contrary to section 21B  
of the Penal Code.

The learned Magistrate accepted the prosecution  
evidence. On that evidence the following facts were established.

A Volks Wagen bus and another vehicle were parked  
near villas Papagallos in the Barkers area. It had taken,  
presumably among others, a visitor who had gone there to dive.  
The visitor went diving leaving in the bus, amongst other things,  
his clothes. In the pocket of his pants he left about \$35.00 in  
C. I. and U. S. currency.

While the bus was away, the police officers took an  
observation posts in hiding in the bushes near the vehicles.  
They saw the appellant and another, Dugmore Powery, ride up on  
bicycles. The appellant and Powery were returning from a fishing  
expedition and had left their lines with them on their bicycles.  
It was about 4.30 p.m. according to P. C. Glaine, one of those  
watching. The appellant admitted to Mr. Glaine. There had

been a search for us search for us search for us search for us

can find" and the appellant had replied: "Hurry up let's go". At all events they both drove into Sand Hole on their cycles and stopped close by the bus. The appellant was about 8 feet from it and remained on his cycle. Powery got off his and entered the bus and searched around. He was seen to pick up a pair of pants and take out some paper money. The appellant was still sitting on his cycle "looking around as if looking for someone or something".

P. C. Blake then called to Powery and told him not to run. Powery ran towards the road. The appellant rode off on his cycle at a fast speed in the same direction. P. C. Blake gave chase on foot. The other police officer gave chase in the car and returned a few minutes later with the appellant.

The visitor returned and confirmed to the police officers that the money he had left in his pants was missing.

The appellant was taken to the police station where he said that they were returning from the fishing expedition. He denied any complicity in the theft although he made the admission referred to above.

At the trial the appellant gave evidence and again denied complicity. The material part of his evidence is as follows:

"Near Spanish Bay Reef Dugmore said to me let us go back to the car and I said no. I stopped. He went into the car. I did not get off my cycle. I said to him that he must not fool with that. He did not listen to me. I did not proceed because I know we had fish to clean and it was getting late and the fish would spoil. Part belonged to him and part to me. He was to help clean it. I had no idea what he had in his mind when he said let us go and check the cars. I watched him go in the car and I told him to come on and let us go home and clean the fish as it was getting late. Police Constable Blake came out the bush. He said "Dugmore stop". I asked him if he wanted me and he did not answer and I started to cycle and rode off. Police Constable Carter came to me. Blake was running and up and down. He had a gun and pointed it at Dugmore. He fired a shot from it. I rode off on my cycle then. I felt he was going to hit me and that is why I rode off. When the police stopped me in the car he said if I want to clear myself and come go to the station. I said nothing. I now say I told him I know I did nothing but I would go all the same."

That is not consonant with his earlier admission to a police officer and, in parts, is inconsistent with the version given by the two police officers in evidence.