JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 48/1975

BEFORE: The Hon. Mr. Justice Luckhoo, P.(Ag.).
The Hon. Mr. Justice Hercules, J.A.
The Hon. Mr. Justice Robinson, J.A.

R. v. NOEL SHAW

APR 9 1976
LEGAL DEPARTMENT
CAYMAN ISLANDS

Granville James for the Crown.

Delano Harrison for Applicant.

November 19, 20 and December 12, 1975

HERCULES, J.A.:

On 20th November we ordered a new trial of this matter and we now set out our reasons for so doing. In view of the order we have made we advert only briefly to the evidence.

The Applicant and 2 others were convicted of Shopbreaking and Larceny in the St. James Circuit Court on 8th April, 1975. Each was sentenced by Lopez J. to 3 years at hard labour. Only this Applicant has pursued the matter in this Court. Indeed he was unrepresented at the trial, but Mr. Harrison appeared in support of the application and was permitted to argue supplementary grounds.

We found one ground to be substantial. Before dealing with that ground however, we wish to notice a complaint made by the Applicant at the back of his Criminal Form 6 to the effect that he was hampered in the conduct of his defence by the failure of the learned trial judge to see to it that Applicant was supplied with a copy of the depositions. Learned Attorney for the Crown before us was unable to say if this was so, and if it was so, why a copy was not supplied to Applicant at the trial. Applicant complained that he could not cross-examine the star witness for the Crown, Stanley Cameron, without the depositions. We formed the view that this complaint together with two other matters presently to be noticed rendered it necessary to grant the application.

The evidence for the prosecution was to the effect that Applicant and others had agreed to assist one Myrtle Linton to remove

goods from the shop of Edward M. Chin and Co. Ltd., in Montego Bay, between 1 and 2 a.m. The evidence indicated that Applicant really played the part of an accessory before the fact and not as a principal in either the first or the second degree. Yet, the learned trial judge at page 15 of the summing-up dealt specifically with the position of a principal in the second degree and nowhere did he deal with the position of an accessory before the fact. This omission would have been manifestly unfair to Applicant since he was not on the scene.

Moreover the view we take of the evidence is that the star Crown witness, Stanley Cameron, could have been an accomplice vel non. He was amongst those who agreed to assist Myrtle Linton. It was not clearly established that he participated in the crime, but there was evidence on which the jury could find that he had. The issue of accomplice vel non was then for the jury and the judge should have directed them that if they considered on the evidence that Cameron was an accomplice, it would be dangerous for them to act on his evidence without corroboration. No such directions were given. This was the one ground argued by Mr. Harrison that we found substantial.

In this state of the matter we granted the application for leave to appeal and treated the hearing of the application as the hearing of the appeal. We allowed the appeal - quashing the conviction, setting aside the sentence, and in the interests of justice ordered a new trial at the next sitting of the St. James Circuit Court. The Appellant meanwhile will remain in custody.