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1972

S. H. No. 01405

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION — CROWN SIDE

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and -

GEORGE DAVID REHBERG

Appellant

[oral opinion]

McKINNON, C.J.N.S.:

The appellant was convicted by His Honour P. T. J. O Hearn, a Judge of the County Court, District Number One, on December 15, 1972, for that

he at or near Halifax, in the County of Halifax, on or about the 4th day of September, A. D. 1972, did unlawfully steal one fourteen ft. SunRay fiberglass boat, one forty horse-power Johnson electric motor and one explorer boat trailer, the property of Birch Cove Sporting Goods Ltd., of a value exceeding two hundred dollars, contrary to Section 194 (a) of the Criminal Code of Canada.

He was acquitted on a charge of possession of these items.

On December 21, 1972, the appellant was sentenced to a term of two years' imprisonment in the federal penitentiary at Dorchester, New Brunswick.

The facts are:

On September 4, 1972, at about 10:30 p.m., Mr. Dennis Lawrence

an employee of Birch Cove Sporting Goods Limited, noticed that a boat, motor and trailer were missing from the front yard of the store where they had been parked two or three days previously. The goods were reported to the police as stolen.

On September 11, 1972, in the course of their investigation, Constables MacIsaac and Langille of the Halifax City Police Department discovered the stolen boat, motor and trailer in the possession of Mr. Wilfred Barry Conrad, the proprietor of a salvage business in Cow Bay, Halifax County. These items were discovered parked behind Conrad's mobile home near the scrap yard. Also in Conrad's possession were two bills of sale in the total amount of \$400.00, one for the motor and one for the boat, both of which were signed with the name 'George Rehberg'.

On the same day, September 11, the items were positively identified by Mr. Mark Ritchie, the owner of Birch Cove Sporting Goods Limited, as being those discovered stolen on September 4th. He later testified as to the total value of the items being approximately \$1,350.00.

At trial Conrad, the salvage yard operator, testified that on September 4, 1972, he purchased the boat and accessories for \$400.00. The seller of the items signed the name of George Rehberg to the bills of sale. When asked whether that person was in Court he identified the appellant and stated he was "pretty sure" that was the individual who sold him the boat. He further stated that he had seen the appellant on five occasions previously and knew his family and in particular his father. He also testified that the appellant

had brothers, that he often referred to them by their wrong names and admitted in reference to the brothers that "they all look alike to me". In cross-examination when asked whether he could have mistaken the appellant for anyone else and in particular one of his brothers, Conrad replied, "it could have been".

Conrad could not remember any distinguishing features about the clothes worn by the person who sold him the boat, motor and trailer, nor could he recall any distinguishing facial characteristics of that person.

While we have grave suspicion that Conrad was not telling the whole truth, suspicion cannot prevail over the evidence before the Court. Where the one witness who had contact with the person who sold him the stolen articles, states, under oath, that it could have been someone other than the accused, then it is difficult to see how identity can be properly established, even considering the receipts given to Conrad and signed George Rehberg: see Rex v. Brown and Angus, 99 C.C.C. 141, O'Halloran, J.A., 147, and Regina v. Smith, 103 C.C.C. 58, Mackay, J.A., 51.

Leave to appeal should be granted.

After considering the whole of the evidence and the submissions of counsel, we are all of the opinion that the guilt of the appellant was not proven beyond reasonable doubt.

Accordingly, the appeal should be allowed and the conviction quashed.

DATED at Halifax, Nova Scotia, this 19th day of January,
A. D., 1973.

Members of Appeal Division

McKinnon, C.J.N.S.

Coffin, J.A.

Cooper, J.A.

Counsel

Robert G. Belliveau, Esq.

Appellant

Graham W. Stewart, Esq.

Respondent