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IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON REGISTRY

M.499/83

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BETWEEN

JACKSON

Appellant

A N D

THE POLICE

Respondent

Hearing: 27th March, 1984.

Counsel: Appellant in person.  
C. Q. M. Almao for Respondent.

Judgment: 27th March, 1984.

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ORAL JUDGMENT OF TOMPKINS, J.

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The Appellant has appealed against his conviction and sentence on a charge that on the 22nd July, 1983, at Taupiri, he did steal one female Boxer dog, valued at \$150, the property of . Following his conviction he was fined \$300, with court costs of \$20 and witnesses expenses of \$23.30.

The Appellant faced these charges jointly with Nuttall, who at that time was the Appellant's fiancée. The circumstances giving rise to the charge are that in July of 1983 , who was an acquaintance of the Appellant and Miss Nuttall, went with Miss Nuttall to a person in Hamilton who had advertised a dog for sale. He said that having examined the dog he decided to buy it, and he paid \$150 to the owner. He left with the dog and also the pedigree papers. Some two or three days later he took the dog to his place of work at the Taupiri Tavern, and later found that the dog had gone. Also missing were the pedigree papers that he said were in the glove box of his car. The loss of the dog was reported to the police.

The evidence from the former owner of the dog was to the effect that she had an earlier visit from the Appellant and Miss Nuttall, that she then had a visit from Mr.

and Miss Nuttall, and that she sold the dog to Mr.

who paid her for it. She denied that any money had been left with her by Miss Nuttall. There was evidence confirming that Mr. had received \$150 at about that time from his employer.

The police constable, Constable Polglase, deposed to locating the dog at the premises occupied by the Appellant and Miss Nuttall, and he described the account given to him by the Appellant of where the Appellant got the dog. The Constable said that the Appellant told him that this dog had been purchased from the Appellant's brother in Titirangi. The Appellant had pedigree papers relating to this dog in his possession. The account given by Miss Nuttall and the Appellant differed substantially from that given by the prosecution witnesses. They described how they had decided to purchase the dog and for that purpose had withdrawn \$150, \$100 from Miss Nuttall's account and \$50 from the Appellant's. They described the initial visit to the former owner of the dog. Then Miss Nuttall described how she went with Mr. Workman to visit the former owner, she paid the former owner \$150, and how she thereby purchased the dog and was given the pedigree papers.

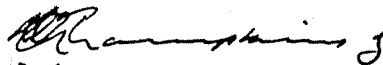
The case for the Appellant was that he was relying on what he believed had occurred as related to him by Miss Nuttall, and that therefore when he and Miss Nuttall took possession of the dog from Mr. 's car at the Tavern he did so with a colour of right, believing, he says, that Miss Nuttall had paid for the dog and that therefore he and she had a right to take possession of it.

There was therefore a conflict of evidence between

the witnesses on several material points, and the District Court Judge who decided the case was required to determine whether he accepted the account given by the prosecution witnesses or whether he accepted the evidence of Miss Nuttall and the Appellant. The learned District Court Judge resolved this conflict by stating that he had no hesitation whatever in saying that he did not believe either of the defendants, and accepted the evidence of the prosecution witnesses. To the learned District Court Judge the evidence showed that both defendants were involved in the theft, and he accordingly found the theft charge proved.

I agree that the issue in this case was one of credibility. The learned District Court Judge, in deciding whether he considered that the Appellant's evidence should be accepted and that thereby the Appellant had a colour of right to take the dog, would determine the issue on his assessment of the evidence. No doubt the learned District Court Judge in making that assessment took into account the explanation given by the Appellant to the police constable on how he came to acquire the dog. In any event, on a simple question of credibility, certainly in this case I would not be prepared to interfere with the decision made in the court below.

The appeal is therefore dismissed.



Solicitors:

Crown Solicitor, Hamilton, for Respondent.