

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 72 & 73/89

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA vs. GEORGE EARLE & SERGE EARLE

Christopher Dunkley for applicants

Paulette Williams for Crown

March 26, 1990

WRIGHT, J.A.:

These are applications for leave to appeal against convictions and sentences resulting from a trial in the Circuit Court for the parish of St. Catherine on April 14, 1989 before Orr J. and a jury.

The applicants and one Tyrone Ross were arraigned on a five-count indictment which charged them as follows:

- Count 1 - Larceny of a Ford Escort motor car the property of Terra Nova Hotel Ltd. on 28.12.86
- Count 2 - Receiving the said motor car knowing the same to have been stolen
- Count 3 - Larceny of a Ford Escort motor car the property of Neville Graham on 30/1/87
- Count 4 - George Earle alone with receiving certain items together with parts from Neville Graham's motor car knowing the same to have been stolen

Count 5 - Receiving certain parts
of Neville Graham's motor
car knowing the same to
have been stolen.

Ross was acquitted of all charges, George Earle was convicted on Counts 1 and 4 and sentenced to five years imprisonment at hard labour to run concurrently and Serge Earle was convicted on count 5 for which he received a sentence of three years imprisonment at hard labour.

At the outset, Mr. Dunkley conceded that so far as George Earle was concerned he could find no merit in the application relating to conviction but would urge a consideration of his sentence. At first blush he thought he could advance some arguments in favour of Serge Earle. However, after further advising himself, he concluded that these brothers were really in the same boat.

A brief outline of the facts of the case will suffice. The car belonging to Terra Nova Hotel Limited was driven to the Hellshire Beach on December 28, 1986, by an employee, one Miss Martinez, from where it was stolen. Mr. Graham's car was stolen from Club Jolly in St. Catherine on the night of January 30, 1987, where Mr. Graham had parked it and where he saw both George Earle and Tyrone Ross. The loss of Mr. Graham's car occasioned him much anguish because at the time he had his wife and their new born baby in hospital to be taken home. But he was never to drive that car either then or at any other time. The larceny of these cars was reported to the Police.

On February 10, 1987, Detective Corporal Forgarthy was on enquiry in the Regent Street area when he saw the applicant George Earle drive a yellow Ford Escort motor car and stop in front of a garage on Regent Street. George Earle tooted the horn and next Corporal Forgarthy saw Serge Earle

and Tyrone Ross emerge from the garage and speak to George and return to the garage. Corporal Forgarthy drove down to the garage, where George was still seated in the car, and identified himself to George. Upon being asked if the car was his, George replied, "Yes, a my car", asked for the papers, he looked in the pocket compartment and replied, "Boss, me must left them at home. Beg you some time to produce them no sah?". The car then wore a licence disc with number and letter 2361 AK. When that car was stolen from the Hellshire Beach it was licensed 4869 AE.

Corporal Forgarthy looked through an opening in the fence and saw both Serge and Ross removing the bonnet from another Ford Escort in the garage and both carried it to be placed in the car driven by George. Questioned about activities in relation to the car, Ross said he had gone to the garage to fix his bicycle and was merely assisting Serge. The latter responded, "A me brethren car, sir. A him a scrap it fe sell". Asked the name of the brethren he replied, "You have to ask George, is him know him name because a him come for the bonnet". By that time the car from which the bonnet was removed had been reduced to the chassis, fenders, rear axle and instrument panel. These as well as the car driven by George were taken to the Police Headquarters where Miss Martinez identified the Hotel's car and Mr. Graham identified the remains of his car. It was then observed that the four wheels on the Hotel's car came from Mr. Graham's car. After arrest and caution, George Earle said, "Me salt, me should never go to the garage that day". Serge remarked, "A mus somebody inform pon me".

In his defence George denied having anything to do with the car or Corporal Forgarthy. He had gone to buy

lunch when the Police saw him and forced him to enter the car. What is more, Corporal Forgarthy was not there. However, his two co-accused as well as a witness called by him agreed that Corporal Forgarthy was the Police Officer involved. George Earle denied the words attributed to him.

For his part, Serge Earle said he had asked his brother, George, to drive his, Serge's, car to the garage for repairs. George left to buy lunch and when Serge came outside he saw both George and his girlfriend entering the Police vehicle.

The summing-up left no room for complaint, as Mr. Dunkley conceded.

As regards sentence there was nothing that could be urged on behalf of George Earle apart from the fact that his age of 40 years somewhat stood out against the bulk of offenders who are in the younger age group. His six previous convictions for larceny of motor vehicles and one conviction for unlawful wounding certified that a sentence of five years was, if anything, lenient.

Serge Earle was following in his older brother's footsteps. At age 27 years he already had two convictions for larceny of motor cars.

Both applications were refused and the sentences ordered to run from 17th July, 1989.