

ROYAL COURT

6th September, 1989

Before: The Bailiff and  
Jurats Vint and Brown

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Police Court Appeal: Franz Hermann Zonta

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Appeal against a conviction by the  
Police Court on one charge of  
larceny by a trick involving £4.74.

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Advocate S.C. Nicolle for the Crown  
Advocate C.J. Scholefield for the appellant.

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**JUDGMENT**

THE BAILIFF: The facts of this case are not difficult to set down shortly. On the 20th April four visitors, a Mr. and Mrs. Whitehouse and a Mr. and Mrs. Welsh went into the restaurant of the appellant and ordered four steaks. They complained about the standard of the steaks and after a good deal of trouble, including the police being called, the appellant agreed to reduce the bill somewhat. The exact amount was in dispute but it is not important in considering this appeal.

Towards the end of the evening, therefore, one of the persons who had objected to the bill, Mr. Welsh, produced £15.50 (and again there is some dispute as to the exact amount) but what he thought was his share of the

bill. The other person, Mr. Whitehouse, produced £20. The money was put down on the bar counter. It was picked up by Mr. Zonta who put it in the till and then told the complainants that he was going to keep it.

There is some dispute as to whether he would have known when the money was on the bar that it was in excess of what had been agreed to be paid, or whether he only became aware of that excess when he placed it in the till.

We do not think that it makes a great deal of difference to this appeal because it is an appeal from his conviction of larceny by a trick. It is conceded by the prosecution this morning that the Magistrate found that when Mr. Zonta agreed to deduct some money from the bill, that was not a trick. That is an inference to be drawn from the transcript and we think it is the proper inference and quite rightly Miss Nicolle has accepted that position.

Therefore the position quite clearly was that when Mr. Zonta, either on the counter or in the till, we do not think it makes any difference, discovered he had too much money, he kept it.

It is suggested by Miss Nicolle that keeping it so far as discovering it on the counter is concerned was part of a continuing representation and therefore when he discovered it then and took it into the till that changed the colour of the transaction. We cannot accept that argument. It is an interesting one, but because the Magistrate by inference (and it is a very strong inference accepted by the prosecution) found there was no trick we cannot say that there was larceny by a trick. There may have been larceny depending on whether the complainants intended to part with possession of the property in the money depending on the facts but we express no view on that. We cannot condone Mr. Zonta's behaviour; we think it was to say the least outrageous and unfair. But having said that we cannot say that the appeal is wrong and we think that in a matter of strict law, which we are bound to follow, the appeal must succeed. Accordingly it does. Mr. Scholefield, you will get your costs.

Authorities referred to:

Archbold (36th edition), paras 1469 and 1483.