

7 pages.

ROYAL COURT

105

16th July, 1990

Before: F.C. Hamon, Esq., Commissioner, and  
Jurats Orchard and Hamon

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Police Court Appeal: David Hamilton Le Sueur

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Appeal against conviction on one charge of criminally  
and fraudulently obtaining board and lodgings to the  
value of £89.89.

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Miss S.C. Nicolle, Crown Advocate  
Advocate M. St. J. O'Connell for the appellant.

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**JUDGMENT**

**COMMISSIONER HAMON:** On Tuesday the 9th January, 1990, the appellant booked into the Mermaid Hotel, St. Peter, for one night's accommodation. He paid cash. He asked to stay for a further night and when the hotel asked for payment he said that he would have to go and see his bank to draw out some money to pay for that accommodation.

He was allowed to stay one more night and at some time there was a further conversation with the hotel management as the arrangement with the bank manager clearly had not worked; as the appellant says in the transcript: "I was unable to see the bank that particular day because the manager was not there". That clearly leads us to the conclusion

that the appellant knew that he was not in funds but was hoping to persuade the bank manager to advance some money to him.

There was, however, a further conversation and I will deal with that in a moment.

He left the hotel without paying and gave his address as Clos du Fort, Rue au Blancq, St. Clement; he had not in fact lived there for some weeks.

He was convicted of criminally and fraudulently obtaining board and lodgings to the value of £89.89.

The matter would be perfectly straightforward but it is in fact complicated by the fact that there was a conversation at some time between the management of the hotel and some friends whom, the appellant had suggested, might vouch for him. The actual conversation takes place at p.15 of the transcript and I think it useful if we set out what the transcript actually says. The receptionist telephoned the friend and under cross-examination there is this exchange between the receptionist and Advocate O'Connell:

Q: It is possible, then, that you did not convey the message back to him?

A: Yes, it's possible, yes.

Q: So it's possible that Mr. Le Sueur may have been left with the impression that he had given you a mode of payment and as far as he was concerned it had been left there. You'd made the telephone call and that was it?

A: No, it was not left under the impression that this gentleman was to be a mode of payment.

Q: But if you accept that you may not have told him that the gentleman on the telephone had said that he would not be responsible then it is possible that Mr. Le Sueur may have believed - I'm not saying what you believed - it's possible that Mr. Le Sueur may have believed that you were satisfied with that arrangement?

A: Yes, it's possible..

Then, in his examination-in-chief the appellant, again with his counsel, has this exchange at p.21 of the transcript:

Q: Can you explain to the court what happened. You told the hotel receptionist, did you, or you invited her to telephone your friend?

A: I did.

Q: And what happened then?

A: She spoke unfortunately I think she spoke to his wife who wasn't very pleased with me at the time. Unfortunately her husband was not in who would have no doubt vouched for me strongly.

Q: Did the hotel receptionist indicate to you what had been said in the conversation?

A: All I got told was: "They will vouch for you".

Q: You were told that they would vouch for you?

A: That's what I was told, yes.

Q: So you had a clear understanding, did you?

A: I did.

Q: That your offer of payment had been accepted?

A: I did, yes.

There were some problems as well about a salary which was due from the appellant's place of employment but we need not go into that as it touches only on the periphery of the matter that we have to deal with.

The learned Assistant Magistrate said in his conclusions: "I have heard from Mr. Le Sueur in the witness box and I am satisfied beyond reasonable doubt that at the time when he obtained the additional night's accommodation he did not have the money to pay which he himself admits in his statement and moreover did not have any real expectation of obtaining the money to pay.

Mr. O'Connell in this appeal deals at length with the intent of the appellant at the time that the offence is alleged to have been committed and he cited to us from Archbold (36th Ed'n) at paragraph 1010 and the passage reads like this:

"Intent

The intention of the party at the time when he commits an offence is often an essential ingredient in it and in such case it is as necessary to be proved as any other fact or circumstance laid in the indictment. Intention however is not capable of positive proof it can only be implied from overt acts. As a general rule every man is taken to intend the natural and probable consequence of his own act".

And again at the bottom of the page:

"When the essence or a necessary constituent of the offence is a particular intent that intent must be proved by the Crown just as much as any other fact necessary to constitute the offence and the burden of proving that intent remains throughout on the Crown. If the Crown prove an act the natural consequence of which would be a certain result and no evidence or explanation is given then the jury may on a proper direction find that the prisoner was guilty of doing the act with the intent alleged. But if on the totality of the evidence there is room for more than one view as to the prisoner's intent the jury should be directed that it is for the Crown to prove the intent to the jury's satisfaction and if on the whole of the evidence the jury either think that the intent does not exist or they are left in doubt as to the intent the prisoner is entitled to be acquitted".

Now Miss Nicolle argues strongly that we should look at the whole of the intent of the appellant taken from the whole of the evidence and she says that it is quite clear from the conclusions given by the learned Assistant Magistrate that that was how he looked at the case. She cited to us the case of Crown -v- H.R. Williams which has as one of its conclusions that if a person takes someone else's money for his own purposes with merely a hope or expectation that he will be able to repay it in the future, that does not amount to a defence to a charge of larceny and can at the most go to mitigation and she cites that of course as analogous to the case in question. In that case she also asked us to look at the case of Carpenter which is 1911 22 Cox CC 618

and that is referred to at p.80 of the Williams' judgment. In that case the quotation is given like this:

"If the defendant made statements of fact which he knew to be untrue and made them for the purpose of inducing persons to deposit with him money which he knew they would not deposit but for their belief in the truth of his statements and if he was intending to use the money so obtained for purposes different from those for which he knew the depositors understood from his statements that he intended to use it then, gentlemen, we have the intent to defraud although he may have intended to repay the money if he could and although he may have honestly believed and may even have had a good reason to believe that he would be able to repay it".

We would have had no hesitation in going along with the learned Crown Advocate had it not in fact been for the exchange that Mr. O'Connell had with the head receptionist at p.15 of the transcript and the words of course that we are referring to again are those:

Q: I am not saying what you believe, it's possible that Mr. Le Sueur may have believed that you were satisfied with that arrangement?

A: Yes, it's possible.

Now, if there is a scintilla of doubt that in fact the appellant was led to believe - despite the very tenuous suggestion that a friend is able to vouch for him - but if he was led to believe that a conversation had taken place as we know it did between the management and his friends and if he was then told by the hotel management that the friends would vouch for him and if he was then allowed as he was as we understand the evidence to stay for at least one more night at the hotel when really all the hotel had to do it seems to us was to tell him to leave immediately and call the police if that was what they wished to do, it does seem to us that there is that doubt in our minds which is sufficient in these circumstances for us to allow the appeal. We do this with some reluctance and we only do it because of that very small point which is made in the transcript. Had it not been there we

would have had no hesitation in saying that the appeal would be dismissed.

We looked also at the conduct after the appellant left the hotel and the fact that he only settled the bill in May by which time he had been arrested by the police. We find that extremely strange because he must have known that he owed the money the moment he walked out of the hotel without leaving a proper forwarding address. But we take into account all that Mr. O'Connell has said on his behalf. That he has reached the age of 46 without any conviction for dishonesty and the fact that he clearly leads a somewhat strange existence, moving from one accommodation to another and staying where best he can. So, on the particular circumstance of this case we are prepared to allow the appeal. Mr. O'Connell you shall have your costs.

Authorities referred to:

Archbold (36th Ed'n) at p.364 para. 1010 re. "Intent".

Archbold (36th Ed'n) at p.1342 para. 3694 re. "Obtain Credit".

Crown -v- H.R. Williams et Uxor March 31st and April 1st, 1953,  
at p.80 (Cox's Law Reports).