



AUSTRALIAN ADVOCACY INSTITUTE

DPP v CANNING

APPEAL – DISTRICT COURT

(AGAINST CONVICTION AND SENTENCE)

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Revised by Professor The Hon. George Hampel AM QC 9 October 2012



Instructions to Participants

The appellant Mr Canning was convicted in the Magistrate's Court of theft and sentenced to be imprisoned for six months.

He now appeals against this conviction and sentence to the District Court.

The Magistrate made the following comments in his reasons:

"I accept Ms Day's evidence that when she came back to her room Mr Canning told her that she could go home and used the words "good luck I hope you find the \$300.00". I am satisfied that there is no basis on which Mr Canning could have known that Miss Day had \$300.00 in her purse unless he had taken it and had enough time to count it before she came back into the room. Therefore there is no need for me to consider whether others had the opportunity to come into the room and steal the purse and the money.

I am reinforced in my conclusions by the evidence of the police.

Mr Canning is a man with no previous convictions and therefore presumed to be of good character. That has only a limited effect in this case because the police officers are not suggested to have anything but good character.

There is a conflict in this case between Mr Canning's evidence and that of the police about the alleged confession at the office of PHB and about the circumstances in which the admissions in the record of interview were made. There is no room here for error as either the police or Canning are lying and as they all start with good character.

The real issue is, who is lying?

I have no hesitation in accepting the evidence of the two police officers that Mr Canning made the admissions at the office and that he was not intimidated into making the admissions during the record of interview. I can find no motive for the police to lie. I cannot accept that a man of Mr Canning's standing and experience would have been intimidated in these circumstances."

After convicting Mr Canning, the Magistrate made the following sentencing remarks:

“I accept everything that has been said on your behalf and particularly the fact that you have previous good character. However, your offence is not just a mere theft. It represents an extreme example of a serious breach of trust. To steal from your own employee, particularly from your own private secretary, and in your position, is despicable and in sentencing you I must send a message that such a breach of trust cannot escape unpunished. General deterrence therefore outweighs the other considerations including your good character. What is more I have accepted the evidence of the police and that means that you lied to the court in your evidence. That does not indicate that you have good prospects of rehabilitation. I sentence you to be imprisoned for six months.”

Instructions

Mr Canning has appealed against his conviction and sentence on the following grounds:

1. That the finding of guilt was against the weight of evidence
2. That the Magistrate erred in not considering the evidence of the opportunity of others to steal the purse
3. That the Magistrate erred in comparing the evidence of good character of the accused with the good character of the police
4. That the Magistrate erred in placing too much weight on general deterrence in the circumstances of this case
5. The sentence is manifestly excessive

You are asked to prepare a summary of submissions for the appeal.

You are asked to prepare to present the appeal and to respond to it according to your allocated roles.

Attached are the statements of the witnesses at the trial. You are to assume that the witnesses gave evidence in accordance with their statements and Mr Canning gave evidence in accordance with his instructions. The statements and instructions follow.

STATEMENT OF MS DAY

My name is Patricia Day. I live at 1 Malcolm Street, Brunswick and I am a secretary by occupation.

In June of last year I was employed by PHB Pty Ltd as a personal assistant to Mr Peter Canning, the company's Managing Director. I have worked with him for about a year.

On the morning of 1st June I came to work at 9.00am. Because I had some money left over from my holidays which I was going to deposit in the bank, I had the \$300 I had saved in cash in my purse which was in my handbag. The money was in six \$50 notes.

As I was entering the building where my office is in Carlton I bumped into Mr Canning who said that he had to leave for the country later that morning and asked me if I could lend him \$20.00. He said he had run out of cash over the weekend and had left his ATM card and credit cards at home. He said he would pay me back next day. I said that I would lend him the money.

I then went into my room which is next to Mr Canning's, put my handbag on my desk and went to the ladies room. I was away for about 3 or 4 minutes and when I came back, he came out of his room and asked me again for the \$20.00. I went to my bag and saw that my purse was missing. I became very upset and thought of the \$300.00 which I could then ill afford to lose. I said 'My purse is missing' and ran out of the room. I went back to the ladies room to check if I may have left it there but could not find it. As I was moving about I noticed some cleaners were still there and other people were moving about the corridor and the various rooms. I again spoke to Mr Canning and said that I have to go home to see whether I might have left the purse there. He said that was all right and as I was leaving to go he said 'Good luck, I hope you find the \$300'.

I was surprised and I ran out of the room and went home.

I did not find the money at home and I have not found the money since. I did not give anyone permission to take my purse or the money from my bag.

I believe that Mr Canning left the office soon after I left and he returned later in the afternoon at about 4.00pm. I told him that I had not found the purse and that I had informed the Police. He seemed to become quite agitated and locked himself in his room.

I spoke to the Police when they arrived and went home. I next spoke to them when they called me the following day. I went to the Police station and made this statement.

It is true and correct.

Signed Patricia Day

10am, 2 June

STATEMENT OF SNR. SGT. MOORE

From information received I went to the premises of PHB Pty Ltd where I had a short conversation with Ms Day. I was accompanied by Constable Spring.

I then spoke to the defendant, Mr Canning, and outlined the circumstances as described by Ms Day. I then said to him 'Can you assist us in any way in this enquiry?' He said, 'I have really nothing much to say. I am very busy. You go ahead and do what you think is proper.' I said, 'Surely you must be concerned about the fact that a large sum of money was stolen from your secretary's purse from her desk in a room adjacent to your own?' He said, 'That is your job. I am very busy.'

He then ushered us to the door and closed the door behind him.

After further enquires I again spoke to Mr Canning and told him that we would like to discuss the matter with him at the Police Station at a time convenient to him. He went very red in the face and became agitated. He walked up and down the room two or three times and then turned to me and said 'Look, this has been on my mind all day. I don't know why I would have done such a thing. I am not short of money. She was going to lend me some cash that morning anyway. It's a rotten thing to do but I may as well tell you all about it.'

I said, 'You are not obliged to answer further questions unless you wish to, but anything you say will be taken down in writing and may be used in evidence against you. Do you still wish to discuss this matter?'

He said, 'I want to get it off my chest. I will come down to the Station with you.'

We then drove to the Police Station where a taped interview was conducted in accordance with the provisions of the Crimes Act. The interview commenced at 5.00pm. It was suspended at 5.04pm while enquiries were made of Ms Day. It was resumed at 5.09pm.

When we returned to the interview room, Mr Canning was in the room with his head in his hands and he appeared to be crying. He said, 'You seem to have been away for hours. I am glad you are back. I want to make a clean breast of it. I know I have done a terrible thing but I don't know why I did it.'

TRANSCRIPT OF INTERVIEW

Conducted at the CIB Office between Senior Sergeant Moore and Peter Canning on Monday 1st June last year.

Present: Constable Spring.

- 1 Q Peter do you agree the time is now 5.00pm
A Yes
2. Q. What is your full name?
A. Peter John CANNING.
3. Q. Where do you reside?
A. 56 Ord Street, Brighton, Victoria
4. Q. What is your occupation?
A. Managing Director of PHB Pty Ltd.
5. Q. What is your age?
A. 50.
6. Q. As you are aware, we are making enquires regarding the theft of a purse containing a sum of money from your secretary. I now intend asking you questions about this matter. Before I do, I must warn you that you are not obliged to say anything unless you wish to. Anything that you do say will be recorded and may be given in evidence. Do you understand?
A. Yes.
7. Q. I must also inform you of the following rights. You may communicate with or attempt to communicate with a friend or relative to inform that person of your whereabouts. You may communicate with or attempt to communicate with a legal practitioner. Do you understand these rights?
A. Yes.
- 8 Q Do you wish to exercise any of these rights before the interview proceeds?
A No

9. Q. Can you recall your secretary arriving at the office this morning?
A. Yes.
10. Q. Did you ask if you could borrow \$20 from her as you were short of cash for your trip to the country?
A. Yes.
11. Q. Did you enter her office which is adjacent to yours during the morning when she was out?
A. I think I passed through there once or twice early in the morning when she was not in.
12. Q. Did you see her handbag on the desk?
A. I didn't notice.
13. Q. Did you again see your secretary, Ms Day, shortly after and ask her again for some money?
A. Yes, I did as I had to leave.
14. Q. Did she, in your presence, open her handbag and say that her purse was missing?
A. Yes, she did. She was very distressed and she ran out of the room.
15. Q. What happened then?
A. I didn't think any more of it and I went back to my room and started preparing for my journey to the country.
16. Q. Did you go to your secretary's handbag for any reason while she was not there?
A. No.
17. Q. Did you take the purse containing the money from her handbag?
A. Definitely not! Why would I do such a thing? I don't need money and she was going to lend me some money for the trip anyway. I wouldn't do such a thing to my own secretary.
18. Q. Did she come back soon after running out of the room and ask if she could go home just in case she had left her purse at home?
A. Yes.

19. Q. Did you say to her words to the effect 'Good luck, I hope you find the money'?
- A. Yes, I think so.
20. Q. What did you do then?
- A. I packed some papers and left for my appointment in Sale. I drove there on my own and I came back to the office about mid-afternoon. I don't think I can help you any more.
- 21 Q We will now suspend the interview while we make some further enquiries. Do you agree the time is now 5.04pm?
- A Yes.

The interview is now suspended. Tape turned off.

Taped interview between Senior Sergeant Moore and Peter Canning resumed.

- 22 Q Peter do you agree the time is now 5.09pm
- A Yes.
- 23 Q Peter I must put it to you that when we spoke to you at your office about the theft you at first said that you were very busy. Is that correct?
- A Yes.
- 24 Q I must further put it to you that when I spoke to you a second time at your office and said we would like to discuss the matter with you at the police station at a time convenient to you, that you said "Look, this has been on my mind all day. I don't know why I would have done such a thing. I am not short of money. She was going to lend me some cash that morning anyway. It's a rotten thing to do but I may as well tell you all about it.' Is that correct?
- A Yes.
25. Q. Do you now wish to tell us something more about the missing purse?
- A. Yes.
26. Q. What do you wish to tell us?
- A. I want to make a clean breast of it. I took the purse. I don't know why I did it. I have never done anything like this before and I don't know what came over me.

27. Q. Did you take it because you needed the money that day?
A. No, she was going to lend me \$20.00 cash and that is all I would have needed until I got some money from the bank.
28. Q. What did you do with the purse and the money?
A. As I was driving to Sale I stopped the car and took the money out of the purse and put it into my wallet.
29. Q. What did you do with the purse?
A. I threw it by the side of the road into some grass.
30. Q. Could you indicate the place on the roadway where you did that?
A. You must be joking, I wouldn't have a clue.
31. Q. Do you wish to say any more about the theft of this purse from your secretary?
A. It was just a spur of the moment thing, I have no idea why I did it.
32. Q. Well, now you are going to be charged with the theft of the purse and the money. Do you have anything further to say or do you wish to make a written statement?
A. No, no, nothing more.
33. Q. Do you agree the time is now 5.20pm?
A. Yes.

We will now conclude the interview.

Interview concluded at 5.20pm

**EVIDENCE AND CROSS EXAMINATION OF SENIOR CONSTABLE SPRING
AT COMMITTAL (TENDERED BY CONSENT AT TRIAL)**

My name is Peter Francis Spring. I am a Senior Constable of Police attached to the Criminal Investigation Bureau.

In company with Senior Sergeant Moore I attended the premises of PHB Pty Ltd. I was present when Sergeant Moore had a conversation with Ms Day. I was also present when Sergeant Moore had a conversation with a Mr Canning. I can recount the details of those conversations if called upon to do so.

Subsequently at the Police Station I was present during the recording of interview between Sergeant Moore and Mr Canning. I typed the record of interview. I was present during the time that the record of interview was taken and am able to give evidence about that conversation if called upon to do so.

In cross-examination he said:

It did not occur to me to contradict the accused with his previous admission when he denied during the first part of the interview that he had taken the purse.

The interview was suspended so that Sergeant Moore could make a note of the conversation with the accused at the office while it was fresh in our minds.

I do not remember any further enquiries being made of Ms Day during that time.

INSTRUCTIONS OF PETER JOHN CANNING

My name is Peter John Canning and I live at 56 Ord Street, Brighton and I am 50 years old.

I am currently employed as the Managing Director of XYZ Pty Ltd and have held that position since January this year

On 1st June last year I was Managing Director of PHB Pty Ltd. On that day I had gone to the office early as I had a meeting in the country that morning and I had to prepare some papers. I had run out of money over the weekend and wanted to borrow some money from somebody at the office as I had left my ATM card and credit cards at home and had to leave soon. At about 9.00am my PA, Patricia Day, arrived. I met her as she was coming in and asked her if I could borrow \$20.00 from her. She said yes and then went into her room.

I went back to my office and packed up the papers to take with me to my meeting. When I had packed them up I went into her office and she was not there. I stood there and waited for her and she came in a minute or two later. I then asked her if I could borrow the money and she said yes and went to her handbag which was sitting on her desk. She rummaged around in it for a while, then appearing very distressed said 'I have lost my purse'. She searched around the office, went out of the room and into the ladies and came back and said that it was not there. She said that she wanted to go home to look for her purse and I said that of course she could go. I said to her 'Good luck, I hope you find the money' and she left.

I left shortly thereafter and went to my meeting in the country. I had to go home first to get my cards. I did not get back to the office until about 4.00pm and when I did I asked Patricia whether she had found her purse. She said that she had not and that she had called the Police. I was surprised but I had lots of work to do so I said nothing more and went into my office. A short time later there was a knock on my door and the Police came in and said that they wished to question me. I was annoyed at being disturbed and I said to them 'I know nothing about it, I can't help you and I am busy'. They then asked me to accompany them down to the City Police Station in order to help them with their enquiries.

I followed them down to the Police Station and they questioned me about the theft.

I have read the transcript of interview and say that it is correct down to question 21 and the answer. At that stage the two policemen left the interview room for a while and then came back and Moore said to me 'Look if you don't kick in and tell us what we want to know, you will not get out on bail.' I became very upset and concerned at this because I had heard about police taking this attitude. I had a very important company meeting and dinner that evening at which I had to make a presentation. I said 'What should I say?' He said 'Just say you took it and you don't know why you did. You can say you're ashamed if you like. You ought to be - a silvertail like you.' He added "You're a clean skin, you'll get a bond. You may not even be convicted.", I said 'Whatever you want, I just want to get out.' He said 'OK, just follow the bouncing ball.' I was terrified at being locked up, my job would be on the line.

As to questions 28, 29 and 30 I just made that up. I know the road very well and if I had taken the purse and thrown it out of the car, I would have known and been able to identify the spot where it was.

As a result of this charge I resigned from PHB Pty Ltd and took the job with XYZ Pty Ltd. Prior to working for PHB Pty Ltd I had been employed at ABC Pty Ltd for 20 years. I started as office boy and general clerk and worked my way up to being Manager of that company. I have always held positions of great trust and honesty and have never committed any dishonest act nor been charged or convicted of any offence whatsoever.

I am very involved in community affairs and am on the committee of many charitable organisations and am the secretary of the local branch of the RSL. I enjoy high standing in the community as do my wife and three children.

This charge has caused great distress to me and to all of them.

SKETCH PLAN PREPARED BY THE ACCUSED

PART OF OFFICES OF P.H.B PTY LTD (1ST FLOOR)

