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IN THE HIGH COURT OF NEW ZEALAND M. 71/84

WHANGAREI REGISTRY

1213

BETWEEN MACINDOE

APPELLANT

A N D THE POLICE

RESPONDENT

Judgment: 7 September 1984

Hearing: 7 September 1984

Counsel: Miss C.F. Bradley for Appellant
C.P. Ramsdale for Respondent

ORAL JUDGMENT OF CASEY J.

This appeal by Mr McIndoe is against his conviction on a charge of attempted theft entered in the Whangarei District Court on 5th June 1984 when he was fined $250 and ordered to pay costs and witnesses expenses. The facts are relatively straightforward and are set out briefly in the learned Judge's decision.

The complainant, Mr Slane, who was in his official capacity attending a Tribunal hearing at Whangarei, occupied one of the dressing rooms at Forum North on 28th March. He described how he left it on the morning in question, locking both doors and leaving his satchel containing a wallet in the room. After he had been gone for a little over one minute he returned and found the Appellant, who was a cleaner, inside near the satchel which had been disturbed and the wallet was lying on the top, and he described how the Appellant looked startled as he entered, while holding a waste paper bin in his hand. Mr Slane thought he had $10 in

his wallet but could not be certain about this. It was not there when he checked through it. The incident was reported to the management and the Appellant was subsequently interviewed by the police and charged. He denied any involvement in disturbing the satchel and wallet and defended the case on that basis.

In his evidence he said he had been talking to a fellow worker near the custodian's office. He saw Mr Slane leave the dressing room and said that a few seconds later he went into the room himself, claiming that the door was unlocked. He did not notice anybody else coming from that same direction and he started tidying in the course of his duties. He accepted that he was surprised by Mr Slane's early return and claimed that when he came in he noticed that the satchel had been opened and the wallet was on top of it. He had a set of keys from which the inference could be drawn that they would have given him access to these rooms in any event.

The learned Judge in a brief decision recited Mr Slane's general account of the events and concluded by stating that the evidence against the Appellant of attempted theft was overwhelming, and he found the information proved. On the appeal, Miss Bradley, makes two points, the first being that there were inadequate reasons given by the learned Judge for his decision which prejudiced the Appellant and she relied on two Court of Appeal decisions - Awatere (1982) 1 NZLR 644, and McPherson (1982) 1 NZLR 650. In the latter the principal judgment was delivered by Somers J., and she referred to his comment that there was an obligation on a Judge at first instance to give reasons for his decision. However, the other two members of the Court preferred the view expressed in Awatere, that there was no inflexible obligation on the Judge to do so, and I refer to the comments made by the learned President that it would be both undesirable and impractical to lay down an inflexible rule of

universal application. Nevertheless, he went on to say that Judges and Justices should always do their conscientious best to provide with their decisions reasons which can sensibly be regarded as adequate to the occasion.

I am satisfied that in the context of this case the reasons given by the learned Judge and the way that the decision was expressed were adequate. This was a perfectly straightforward set of circumstances. There was little or no conflict on the basic evidence surrounding the episode and clearly in his comments about the effect of the evidence, he impliedly rejected the Appellant's denials of guilt and the inference that there could have been somebody else there, which was the only explanation offered and open on the circumstances.

I am also satisfied that even if the judgment could have been fuller, there was no prejudice to the accused on his appeal, as witness the competent way that Miss Bradley handled the second of her grounds - namely, that the circumstances (and this was a case based essentially on circumstantial evidence) - did not exclude a rational explanation consistent with the accused's innocence. In other words, that somebody else could have been responsible for the interference with the satchel. On this point both Counsel took me through various passages of the evidence. It is clear that the time factor is crucial in this case and, as Mr Ramsdale pointed out, on the Appellant's own admission to the police, he said he went into the room straight after he saw Mr Slane go. In his evidence he said it was a few seconds later - he continued to talk to his friend in the custodian's office and then went straight into the room.

These matters, of course, are decided on the application of ordinary common sense and when one looks at the totality of the evidence, including Mr Slane's assessment of the time he was away, which he had carefully checked

afterwards, and in the light of what Mr MacIndoe has said, it is impossible to say there is a rational explanation that some other person could have got into the room within that time, opening the door, interfered with the satchel and leaving it before Mr MacIndoe had arrived on the scene. Such a view is no more than a speculative possibility and does not give rise to any reasonable doubt over the guilt of the accused. The circumstances persuade me to the same conclusion as the learned Judge reached, that the evidence against him was overwhelming. The appeal must therefore be dismissed. There will be no order for costs.

M.E. Casey J.

Solicitors:

Chapman Tripp, Whangarei, for Appellant
Crown Solicitors Office, Whangarei, for Respondent