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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

AP 189/89

**LOW
PRIORITY**

1897

BETWEEN

H

Appellant

A N D THE POLICE

Respondent

Hearing: 17th November 1989

Counsel: P.H.B. Hall for Appellant
R.E. Neave for Respondent

ORAL JUDGMENT OF WILLIAMSON J.

This is an appeal against conviction on a charge of stealing one packet of peanuts valued at \$2.66, the property of the Farmers Trading Company.

The facts found by the District Court Judge were that on the 23rd June 1989 the Appellant asked for a bag of nuts while in the Farmers store. This was handed to him and he then offered the money to pay for it to the shop assistant. She did not have sufficient change or the appropriate change and she requested him to go to another service counter where he could pay for the nuts. Because she did not see him stop at the nearby counter but rather moved along past it, she reported the matter to the shop security manager. He approached the Appellant, who was then eating some of the nuts, and asked him if he had paid for the nuts. He said the Appellant said that he had paid for them but was unable to produce any receipt. The security manager checked with other shop assistants to see if any one of them had received money from the Appellant.

Meanwhile the Appellant's friend had placed \$3 on the till near the exit to the shop. The Appellant then left the shop but was later apprehended by the security manager and the Police.

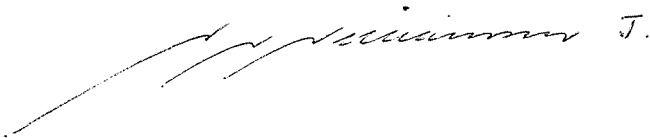
The District Court Judge, in dealing with these facts, said that the matter had to be decided upon the basis of the Appellant's intent and that she was satisfied that he had decided to take the nuts without "making any further attempt to pay for them". Somewhat understandably in a charge of this nature, there was no great reference in the District Court Judge's decision as to the basis upon which this decision was given.

At the time when the Appellant took the nuts he clearly did have an intention to pay for them because he passed over the money, at that time, in payment for them. The bag of nuts being delivered to him, he then left the immediate area of the shop but did not leave the store. At the time the movement of the nuts or "taking" took place he did not have an intent to steal.

An alternative basis for conviction could have been suggested (although it was not referred to in the decision), namely that at some later time he decided to convert fraudulently and without colour of right the nuts to his own use. The evidence of this could only have been by inference from the fact that he said to the security manager that he had paid for them when he may not have done so. There are lots of other reasons why, when confronted with the security manager,

he may have chosen to tell a lie rather than because he had a fraudulent intent. Given the fact he was still in the shop and that the nuts had been delivered to him; and that his friend paid over money to cover the nuts, such an inference, even given this alternative basis, would not appear justified by the evidence.

For the reasons given, the appeal is allowed and the conviction quashed.

A handwritten signature in cursive script, appearing to read "William J.", is written in the lower right quadrant of the page.

Solicitors:

Wood Marshall, Christchurch, for Appellant
Crown Solicitor, Christchurch, for Respondent