J A M A I C A

IN THE COURT OF APPEAL

CAYMAN ISLANDS GRAND COURT APPEAL No. 7 /71

B E F O R E: The Hon.Mr. Justice Luckhoo, Ag. President
The Hon. Mr. Justice Edun
The Hon. Mr. Justice Hercules (Ag.)

ORMOND PANTON v. REGINA

Norman Hill, Q.C. and P. Rickards for the Crown.
Dudley Thompson, Q.C., C. Rattray Q.C. and
W.K. Chinsee for the Applicant.

15th, 16th December, 1971 and 14th January, 1972.

HERCULES, J.A. (Ag.)

The trial of this Applicant took place from the 18th to the 21st January, 1971. He was charged with fraudulently converting to his own use and benefit on 9th February, 1968, the sum of £500 received by him for and on account of three brothers, viz: .. Melbourne Watler, Stacey Watler and Keithbourne Watler contrary to Section 23(1)(iii)(b) of the Larceny Law Chapter 82. The jury by a majority verdict found him guilty and he was sentenced to imprisonment for two years.

Melbourne Watler gave evidence that the Cayman Islands Government had destroyed 900 feet of road frontage of certain lands at Frank Sound, Grand Cayman, owned by the three Watler brothers. Melbourne Watler authorised Applicant to negotiate with the Government for compensation for the damage done to those lands. In consideration thereof he paid Applicant 20 guineas.

Some days later, Applicant reported that he had seen the Administrator and that the Administrator would not agree to pay more than £500 as damages. Applicant advised Melbourne Watler to accept the £500 in view of the possibility of losing the case in the Grand Court.

Next .../

Next day, on Applicant's invitation, Melbourne Watler went to Applicant's office and signed a document purporting to be a quit claim, whereupon Applicant wrote out a cheque for £500 and handed it over. Melbourne Watler then gave Applicant £5 and Applicant told him not to let anyone know how much was paid by the Government. This witness testified that he first knew that Applicant was really paid £1,000 when he went to the Administrator's office some time in the month of March and he never authorised Applicant to retain £500.

In cross-examination, however, the same Melbourne Watler stated: "He (referring to Applicant) used the word 'bonus'. I took it that if he could get more from Government than what he told me Government had paid, he could keep it." This was clearly repeated in re-examination as follows: "I understood that Government could pay £500 and that anything Panton could get over was his. I received £500, I gave him £5. It had nothing to do with bonus." This evidence in cross-examination and re-examination was a complete volte face from the evidence given in chief. As part of the crown's case, the witness admitted quite unequivocally, that he expected Applicant to keep whatever he got in excess of £500.

Moreover, apart from this verbal evidence, Melbourne Watler admitted signing two documents both of which were received in evidence as Exhibits 'A' and 'B'. Exhibit 'A' reads as follows:

"

GEORGE TOWN,
GRAND CAYMAN,
CAYMAN ISLANDS
8th FEBRUARY, 1968.

R E C E I P T

RECEIVED FROM O.L. PANTON (LAW AGENT) ACTING IN MY BEHALF IN NEGOTIATIONS WITH THE GOVERNMENT of the CAYMAN ISLANDS, FOR SETTLEMENT OF A CLAIM FOR ALLEGED DAMAGES DONE TO MY PROPERTY AT FRANK SOUND, DISTRICT OF GRAND CAYMAN, CAYMAN ISLANDS, DURING THE ROAD CONSTRUCTION IN GRAND CAYMAN IN 1958 to 1960, THE SUM OF FIVE HUNDRED POUNDS (£500). STG.

HAVING .../

" HAVING HERETO ACCEPTED AND HEREBY SET MY HAND AND SEAL HERETO I MELBOURNE WATLER, DO HEREBY FULLY AND FOREVER RELINQUISH ANY FURTHER CLAIMS AGAINST THE GOVERNMENT of the CAYMAN ISLANDS AND ANY OTHER PARTY IN THIS CONNECTION.

IT IS FURTHER AGREED THAT ANY COMMISSIONS OR OTHER EXPENSES INCURRED IN SETTLING THIS MATTER MUTUALLY OUT OF COURT IS NOT MY RESPONSIBILITY, AND THAT MY LAW AGENT CAN CLAIM SUCH FURTHER EXPENSES AND/OR COSTS FROM THE GOVERNMENT.

SIGNED, SEALED AND DELIVERED THIS 8th DAY OF FEBRUARY IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND SIXTY EIGHT.

SGD. MELBOURNE WATLER
MELBOURNE WATLER, et al.

WITNESS (to the above signature)
Sgd. NAOMI PANTON. "

Exhibit 'B' reads as follows:

"

George Town,
Grand Cayman,
Cayman Islands,
7th January, 1968.

GRAND CAYMAN,
CAYMAN ISLANDS S.S.

TO WHOM IT MAY CONCERN:-

THIS AGREEMENT MADE THIS DAY ABOVE WRITTEN BETWEEN ORMOND L. PANTON ACTING AS MY 'LAW AGENT' AUTHORIZES MR. PANTON ACTING IN MY BEHALF TO NEGOTIATE WITH THE GOVERNMENT of the CAYMAN ISLANDS IN SETTLEMENT FOR DAMAGES DONE TO MY PROPERTY AT FRANK SOUND DISTRICT, ISLAND AFORESAID, FOR A SUM OF NOT LESS THAN £500. 0. 0. FIVE HUNDRED POUNDS STG.

UPON RECEIPT OF SUCH SUM I MELBOURNE WATLER, ACTING ON BEHALF OF MYSELF, AND MY BROTHERS STACEY WATLER AND KEITHBOURNE WATLER ALL BEING LEGAL OWNERS OF SAID PROPERTY, HEREBY AND

FOREVER ..../

"FOREVER RELINQUISH ALL OR ANY FURTHER CLAIMS AGAINST THE GOVERNMENT of the CAYMAN ISLANDS.

SIGNED, SEALED AND DELIVERED. SGD. MELBOURNE A. WATLER
MELBOURNE A. WATLER.

SIGNATURE (?)
WITNESS OF THE ABOVE
SIGNATURE. "

The signature of the witness is apparently indecipherable and does not appear on the copy filed with the bundle.

It is to be noted that in Exhibit "B", Applicant was authorised to negotiate for a sum of not less than £500. As pointed out above, the contents of the document were supplemented by the evidence of Melbourne Watler who "understood that Government could pay £500 and that anything Panton could get over was his".

Vassel Johnson, Financial Secretary of the Cayman Islands, gave evidence confirming that £1,000 was paid to the Applicant but he denied that Exhibit 'A' was the quit claim given to him. It is most unfortunate that the Crown did not produce the quit claim that ought to have been in the possession of the Financial Secretary. In any event, Exhibit 'A' as it stands does not purport to establish anything contrary to the evidence given by Melbourne Watler. The verbal evidence remains quite clear as to what must have been agreed between the parties regarding any sum in excess of £500.

At the close of the Crown's case, Mr. Thompson made a no-case submission on the basis, inter alia, that Melbourne Watler understood that bonus meant any profit over and above £500 was to go to defendant. This submission was rejected by the Learned Trial Judge who called upon the defendant and left the case with the jury.

Many grounds of appeal were filed by the Applicant but the one most laboured by Mr. Thompson and which indeed attracts the attention of this court is: "that the Learned Trial Judge was wrong in Law to have refused a no-case submission as the evidence of the crown does not

establish .../

establish the ingredients of the offence charged".

There can be no doubt that ordinarily the question whether the prisoner took the property charged bona fide under a claim of right or whether there is fraudulent intent is for the jury. But in order that a prisoner charged with fradulent conversion may be convicted, he must be found to have a fraudulent intent - R. v. Hignett (1950), 94 S.J. 149 - "Moreover, the true nature of the transaction is a question of fact in each case", R. v. Smith 18 Cr. App.R.76 and R. v. Sheaf 19 Cr. App. R. 46.

What falls for determination now is whether on the evidence of Melbourne Watler quoted above it can be said that the ingredient of fraudulent intent was established by the Crown so as to make out a prima facie case. Mr. Hill submitted that it was, but it clearly emerges out of that evidence that when the applicant retained the £500 in excess that was paid by the Government, he was merely doing what he was expected to do in accordance with the arrangement he made with Melbourne Watler. On the basis of that arrangement, the question of fraudulent intent was completely negatived in the case for the Crown. Indeed that evidence goes further and also establishes a bona fide claim of right to the £500 in excess, on behalf of the Applicant.

It is hardly necessary to examine the authorities dealing with the submission of no case to answer. Suffice it to say that one situation in which such a submission can be upheld is where the prosecution's evidence has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it. This albeit is a matter of practice and not a matter of law - Per Lord Parker C.J. Practice Note (1962) 1 All E.R. 448. In the state of things in this case, the submission that no prima facie case had been made out and that the case should not have been left to the jury was sound and should have been upheld.

Therefore .../

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Therefore, by a majority of the court, this application for leave to appeal against conviction and sentence has been treated as an appeal, the appeal is allowed, the conviction is quashed and the sentence is set aside.