1981

IN THE COURT OF APPEAL FOR THE CAYMAN ISLANDS

CAYMAN ISLANDS CRIMINAL APPEAL NO. 3 of 1980

JOHN WAYNE RAY V. REGINA

COR: The Honourable Mr. Justice Leacroft Robinson, President
The Honourable Mr. Justice H.D. Carberry, J.A.
The Honourable Mr. Justice Boyd Carey, J.A.

Mr. Horace Edwards, Q.C.,)
Instructed by Mr. Neville Levy) for Appellant

Mr. John Furness for The Crown

8th, 9th June, 1981

CAREY, J.A.

John Wayne Ray was convicted before the Magistrate on the 9th of June, 1980, on the following charges:- The first charge was Forgery, contrary to Section 256 of the Penal Code. The particulars of the offence were stated in the following form:-

"John W. Ray between 1st and 9th May 1979 at George Town forged a document namely Canadian Imperial Bank of Commerce Bank Draft No. 1269936 with intent to defraud."

The second charge was that of Obtaining Property by Deception contrary to Section 223(1) of the Penal Code, the particulars being that:-

"John W. Ray on the 9th May 1979 at George Town dishonestly obtained $30,000 US from Canadian Imperial Bank of Commerce namely by the request for a Bank Draft payable to Kent Winford drawn on the account of St. Ives Insurance Company Ltd. and the subsequent forged endorsement of the name of Kent Winford, had it paid to himself with intention of permanently depriving the St. Ives Insurance Company Ltd. by deception by falsely representing that the cheque No. 1269936 was genuine."

In respect of his conviction on these charges sentences of nine months imprisonment each were imposed.

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An appeal was taken to the Grand Court before the Chief Justice. The appeal against conviction was dismissed but the learned Chief Justice varied the sentence to one of six months hard labour on each charge concurrent.

The appeal before this Court is from those decisions.

The facts in the prosecution case can be outlined in this way, and a convenient reference point is the judgment of the learned Chief Justice, and we quote from that judgment.

"On 1st May 1979 the appellant initiated and authorised a bank advice to Canadian Imperial Bank of Commerce for the issue of a draft for US $30,000 payable to Kent Winford. The bank advice was on Cayman Underwriters Services Ltd. headed notepaper with instructions to debit the call account of St. Ives Insurance Company Ltd. with the cost of the draft. The banking advice was counter-signed by a duly authorised signatory. It was presented to an officer of the Canadian Imperial Bank of Commerce who issued a draft for US $30,000 with Kent Winford named as payee. That draft came into the possession of the appellant. On 1st May 1979 the account of St. Ives Insurance Co. Ltd. was debited with the cost.

At the time of this transaction neither company was indebted to Kent Winford or his company in the sum of $30,000. It would appear from the prosecution evidence that, at most, Cayman Underwriters Services Ltd. owed Kent Winford's company, Trenwick Ltd. $5,000. It is common ground that Kent Winford did business with both companies and was from time to time owed money by one or other, including an earlier occasion when $30,000 was owed and paid.

Between 1st and 9th May 1979 the appellant signed the name of Kent Winford on the back of the draft. He did this without the knowledge, consent or authority of Kent Winford. He then added his own signature under the false signature of Kent Winford.

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"On the 9th May 1979 the appellant sent a handwritten note with the draft, endorsed as described above, to the Canadian Imperial Bank of Commerce. The note asked for $18,840.11 to be transferred to an account with Atlantic Bank of Jacksonville and the balance of the proceeds to be credited to his (the appellant's) local savings account. This was duly done by the bank official handling the draft, believing the endorsements to be genuine. The $18,840.11 was transferred to the Jacksonville bank by telex. The amount of $11,192.89 was placed to the appellant's credit in his savings account.

It was the case for the prosecution, accepted by the learned Magistrate, that Kent Winford at no time gave the appellant any instructions as to the endorsement or encashment of the draft or as to the disposition of the proceeds. It was clear from Kent Winford's evidence that he knew nothing of the draft. It was put to Kent Winford in cross-examination that he received some of the proceeds in small sums and by way of disbursement to his friends. He denied this and the learned Magistrate accepted him as a truthful witness. Kent Winford also stated that neither he nor his company had any accounts in Jacksonville.

On 23rd May 1980 the appellant was taken to the police station and there interviewed. The statements made at the police station were challenged. It was contended that they were not voluntary and, therefore, inadmissible. Following a trial within a trial the learned Magistrate held that the statements were voluntary and admissible and no issue was made of that ruling on the appeal."

The defence at the trial was that the appellant had been authorised by Kent Winford to sign his, Kent Winford's, name at the back of the draft which the bank issued. It was being alleged by the appellant that he personally knew Winford, they had been at the same University,

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and that they had done business together at some time in the past in this country. According to the appellant, Mr. Winford wanted some money which was owed to him by St. Ives Insurance Company in order to raise capitalisation for some new company, and a bill had been sent for this amount which resulted in this bank advice being issued by the appellant.

The Magistrate disbelieved him, accepted the witnesses for the prosecution and convicted him.

In this Court, the grounds filed may be divided into two categories. The first relates to the evidence. It was contended that the convictions were unsafe and unsatisfactory. The other category comprised points of law. It was argued in effect that the learned Chief Justice failed properly to evaluate the evidence since he did not appreciate the ingredients of the law applicable to the charge of Deception. It is also said and argued that this charge was "void and bad in law".

As to the first ground which we say is on matters of fact, Mr. Edwards will perhaps acquit us of any discourtesy if we try to compress what it was he was putting before the Court. He urged that the Crown's case demonstrated that this draft, which was issued, was a perfectly valid draft, that it could only have been issued because the proper procedures were adopted in the office of the Cayman Underwriters Services Limited and that by that reason of the presumption of continuity the proper documentation existed in which event the document was not false. It may be said that at the trial there was no production of documentation on which the issue of this draft was based. Mr. Ian White who gave evidence for the prosecution and who had signed what is described as a bank advice, stated that he did so because he had seen the signature of Mr. Ray and he believed that this was a genuine transaction.

One of the issues before the learned Magistrate was, had there been a forgery of that draft? In other words, did the appellant who signed the name of Kent Winford at the back of the draft, have the authority to do so? Section 251 of the Penal Code recites:-

"Forgery/-

"Forgery is the making of a false document with intent to defraud or deceive."

Section 253 provides:-

"Any person makes a false document who....."

and (c)(i) which is appropriate says:-

"..... signs the document in the name of any person without his authority whether such name is or is not the same as that of the person signing."

Once the learned Magistrate had found that there had been no authority for the signing, then it was clear that the appellant had made a false document. The making of a false document is a forgery provided, of course, the relevant intent to defraud has been shown.

So far as the facts in this case go, once it was found by the Magistrate that the appellant did not have the authority to do what he did, then plainly an intent to defraud was proved. In our view the evidence was overwhelming that this appellant had forged this bank draft.

Mr. Edwards endeavoured to show that the statement which the appellant gave to the police was not a confession. The statement in our judgment made certain very damaging admissions. It acknowledged that he had signed and in it, the appellant undertook to repay the amount. What is curious about this statement is that the promise to make reparation was not to Mr. Kent Winford who one would have thought was the person deprived, but the St. Ives Insurance Co. Ltd. In our view that was a most damaging admission and would tend to show that the appellant well knew what he was about, namely, that he intended to deceive and to defraud St. Ives Insurance Company of the $30,000 U.S. currency.

We are unable to agree with Mr. Edwards that the evidence of Kent Winford had holes in it. At all events the learned Magistrate saw and heard Mr. Winford, as indeed he heard all the witnesses in this case,

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and he came to the conclusion that Mr. Winford was a witness of truth. So far as the argument put forward about unreasonableness goes, we really see no merit in this ground.

Insofar as the second charge was concerned, which relates to the deception, the deception in this particular case was the initiation by the appellant of the whole process by issuing the bank advice, obtaining the draft, issuing the handwritten order to transfer $18,849.11 to some account in the Atlantic Bank of Jacksonville and to credit the remainder to the appellant's local account.

Now, the question before the learned Magistrate was, did the appellant obtain this money? The answer is undoubtedly, yes. He obtained $30,000 U.S. which he allocated in the manner we have mentioned. How did he obtain it? He obtained it by deceit. That is what the prosecution had to establish and that is certainly what they did establish. He was certainly not authorised to sign Kent Winford's name on the back of the draft.. Once that was done the deception was proved beyond all reasonable doubt.

As we understand Mr. Edwards, it was that the second charge was bad. Why was it bad? It was defective, he said, because it would not have conveyed to the appellant what it was he had to answer. That is rather difficult to appreciate because the appellant made an answer to that charge. As the learned Chief Justice demonstrated in his judgment, the charge was inelegantly drafted; it suffered from prolixity. The effect of that prolixity in our view was not to mislead the appellant but served to amplify or indicate the nature of the evidence that would have been adduced against him. It is difficult to see how in those circumstances where a defect, it if may be so termed, can only serve to assist the appellant in making his defence that any prejudice to him can result. In the result we find that there is no merit in that argument.

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There was a great deal said as to whose account was debited and whether St. Ives or Kent Winford had suffered any loss. In our judgment, it is wholly unnecessary to delve into all that technical detail for the simple reason that what the prosecution had shown as regards the second charge, was that property was obtained by the practice of deception. We are unable to find any justification for the complaints levelled at the judgment of the learned Chief Justice, and for substantially the same reasons given by him in his judgment, in dismissing the appeal, we too are of the clear opinion that there really was no vestige of merit in this appeal. The appeal is dismissed and the convictions and sentences affirmed.

Before parting with this appeal we would like to observe that the appellant is signally fortunate in that the prosecution elected to deal with him under the section which they in fact did instead of Section 257(2) of the Penal Code. Counsel on his behalf very prudently at the cutset abandoned the appeal against sentence in this Court.

9th June, 1981.