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HOUSE OF LORDS

R v LAMBIE

Lord Diplock, Lord Fraser of Tullybelton, Lord Russell of Killowen, Lord Keith of Kinkel and Lord Roskill

3, 25 June 1981

[1981] UKHL 4; [1982] AC 449; (1981) 3 WLR 88; (1981) 2 All ER 776; 73 Cr App R 294

CRIMINAL LAW – FRAUD – OBTAINING A PECUNIARY ADVANTAGE BY DECEPTION – CREDIT CARD USED FOR PURCHASES AFTER CREDIT CARD LIMIT EXCEEDED – WHETHER REPRESENTATION OF AUTHORITY TO USE CARD – WHETHER SHOP ASSISTANT INDUCED BY FALSE REPRESENTATION TO SELL GOODS ON CREDIT – WHETHER CREDIT CARD USER GUILTY OF OBTAINING A PECUNIARY ADVANTAGE BY DECEPTION.

L. was issued with a credit card with a limit of £200. In respect of this particular offence L. selected goods at a store and presented the credit card to a departmental manager to obtain the goods. This was after L. had agreed to return the credit card to the bank. The manager checked and found that the card was not on a stop list and the transaction was completed. This brought into existence an agreement between the shop and the bank whereby the bank would pay the shop for the goods. L. exceeded the limit and on the bank's insistence agreed to return the card; but she failed to return the card and used it for further transactions. She was charged with the offence of obtaining a pecuniary advantage by deception namely the evasion of a debt by the false representation that she was authorised to use the card. At the hearing it was contended by the defence that it was not any representation by L. which induced the transaction but the knowledge of the shop manager that the bank would pay the shop for the goods. L. was convicted and upon appeal the conviction was quashed. Upon appeal to the House of Lords—

HELD: Appeal allowed. Conviction restored.
Unauthorised credit cards are the same as unauthorised cheques. Presenting a credit card without authority to use misrepresents that the defendant is authorised. L. by presentation of the credit card (which had been withdrawn) purported to represent that she had authority from the bank to make the purchase and that the bank would honour the purchase. This was a false representation and L. was rightly convicted of the charge.

LORD ROSKILL: (with whom the other Law Lords agreed) … [T]he Court of Appeal Criminal Division laid too much emphasis on the undoubted, but to my mind irrelevant, fact that Miss Rounding [the Departmental manager] said she made no assumption about the respondent's credit standing with the bank. They reasoned from the absence of assumption that there was no evidence from which the jury could conclude that she was 'induced by a false representation that the [respondent's] credit standing at the bank gave her authority to use the card'. But, my Lords, with profound respect to Cumming-Bruce LJ, that is not the relevant question. Following the decision of this house in *Metropolitan Police Commissioner v Charles* [1977] AC 177; [1976] 3 All ER 112, it is in my view clear that the representation arising from the presentation of a credit card has nothing to do with the respondent's credit standing at the bank but is a representation of actual authority to make the contract with, in this case, Mothercare on the bank's behalf that the bank will honour the voucher on presentation. On that view, the existence and terms of the agreement between the bank and Mothercare are irrelevant, as is the fact that Mothercare, because of that agreement, would look to the bank for payment.

That being the representation to be implied from the respondent's actions and use of the credit card, the only remaining question is whether Miss Rounding was induced by that representation to complete the transaction and allow the respondent to take away the goods. My Lords, if she had been asked whether, had she known the respondent was acting dishonestly and, in truth, had no authority whatever from the bank to use the credit card in this way, she (Miss Rounding) would have completed the transaction, only one answer is possible: 'No'. Had an affirmative answer been given to this question, Miss Rounding would, of course, have become a participant in furtherance of the respondent's fraud and a conspirator with her to defraud both Mothercare and the bank.

Leading counsel for the respondent was ultimately constrained, rightly as I think, to admit that had that question been asked of Miss Rounding and answered, as it must have been, in the negative, this appeal must succeed. But both he and his learned junior strenuously argued that as Lord Edmund-Davies pointed out in his speech in *Charles* [1976] 3 All ER 112 at 122; [1977] AC 177 at 192-193, the question whether a person is or is not induced to act in a particular way by a dishonest representation is a question of fact, and, since what they claimed to be the crucial question had not been asked of Miss Rounding, there was no adequate proof of the requisite inducement. In her deposition, Miss Rounding stated, no doubt with complete truth, that she only remembered this particular transaction with the respondent because someone subsequently came and asked her about it after it had taken place.

My Lords, credit card frauds are all too frequently perpetrated, and if conviction of offenders … can only be obtained if the prosecution are able in each case to call the person on whom the fraud was immediately perpetrated to say that he or she positively remembered the particular transaction and, had the truth been known would never have entered into that supposedly well-remembered transaction, the guilty would often escape conviction. In some cases, of course, it may be possible to adduce such evidence if the particular transaction is well remembered. But where as in the present case no one could reasonably be expected to remember a particular transaction in detail, and the inference of inducement may well be in all the circumstances quite irresistible, I see no reason in principle why it should not be left to the jury to decide, on the evidence in the case as a whole, whether that inference is in truth irresistible as to my mind it is in the present case. In this connection it is to be noted that the respondent did not go into the witness box to give evidence from which that inference might conceivably have been rebutted.

My Lords, in this respect I find myself in agreement with what was said by Humphreys J giving the judgment of the Court of Criminal Appeal in *R v Sullivan* (1945) 30 Cr App R 132 at 136:

> 'It is, we think, undoubtedly good law that the question of the inducement acting upon the mind of the person who may be described as the prosecutor is not a matter which can only be proved by the direct evidence of the witness. It can be, and very often is, proved by the witness being asked some question which brings the answer: "I believed that statement and that is why I parted with my money"; but it is not necessary that there should be that question and answer if the facts are such that it is patent that there was only one reason which anybody could suggest for the person alleged to have been defrauded parting with his money, and that is the false pretence, if it was a false pretence.'

It is true that in *R v Laverty* [1970] 3 All ER 432 at 434; (1970) 54 Cr App R 495 Lord Parker CJ said that the Court of Appeal, Criminal Division, was anxious not to extend the principle in *Sullivan* further than was necessary. Of course, the Crown must always prove its case and one element which will always be required to be proved in these cases is the effect of the dishonest representation on the mind of the person to whom it is made. But I see no reason why in cases such as the present, where what Humphreys J called the direct evidence of the witness is not and cannot reasonably be expected to be available, reliance on a dishonest representation cannot be sufficiently established by proof of facts from which an irresistible inference of such reliance can be drawn. My Lords, I would answer the certified question in the negative and would allow the appeal and restore the conviction of the respondent on the second count in the indictment which she faced at the Crown Court.
