

23/81

SUPREME COURT OF SOUTH AUSTRALIA

R v LOCKETT

Zelling, Jacobs and Legoe JJ

11 December 1980; 21 January 1981

(1980) 24 SASR 54; 41 FLR 164; 27 ALR 444; 2 A Crim R 374; noted 9 ABLR 130

CRIMINAL LAW – CHARGE OF IMPOSING UPON THE COMMONWEALTH BY AN UNTRUE REPRESENTATION – APPLICATION FOR A CREDIT CARD FROM COMMONWEALTH BANK – CREDIT LIMIT OF \$500 IMPOSED – MONEYS OBTAINED IN EXCESS OF CREDIT LIMIT – ELEMENTS OF OFFENCE – WHETHER NECESSARY TO PROVE AN INTENT TO DEFRAUD: *CRIMES ACT* 1914 (CTH), s29B.

Upon a charge of imposing upon the Commonwealth or a public authority under the Commonwealth by an untrue representation, with a view to obtaining money or any other benefit or advantage, contrary to s29B of the *Crimes Act* 1914, it is not necessary for the prosecution to prove an intent to defraud on the part of the accused.

The appellant applied to the Commonwealth Bank Branch for the issue of a bankcard. Permission for this facility was granted with a limit of \$500 credit. The appellant admitted receiving some at least of the relevant statements in relation to his own account and these showed the limit of credit granted. The statements in relation to this man were tendered and there is no doubt that factually at least he obtained the various amounts which were the subject of the seven charges by presenting the bankcard at various branches of the Commonwealth Trading Bank and obtaining moneys in excess of his limit of \$500. The bankcard facility was not withdrawn until 10th July after the dates of all the offences charged, that minor excesses were not considered to be of great concern by the bank, and that on some occasions at least the person approving the advance did not in fact obtain any authorization in breach of bank rules. It was submitted that there was no evidence on which the jury could find that the accused imposed on the Commonwealth Trading Bank by an untrue representation within the meaning of s29B of the *Crimes Act*.

Section 29B of the *Crimes Act* reads as follows:

"Any person who imposes or endeavours to impose upon the Commonwealth or any public authority under the Commonwealth by any untrue representation, made in any manner whatsoever, with a view to obtain money or any other benefit or advantage, shall be guilty of an offence."

ZELLING J: Mr O'Halloran argued as follows: First, that there could be no imposing on the Commonwealth provided the bank did not withdraw the credit facility; in other words, as long as the bank allowed the credit facility to continue it was not being imposed upon. That cannot be right. If the appellant had gone to ten branches of the bank on one day and asked for sums under \$200 in each case, clearly he would have been given them, even though the total effect would be to obtain moneys beyond the credit limit of \$500. His second point was that the bank was not deceived or cheated and this was a necessary part of the offence. It is true that the bank may not have been imposed on as such but certainly individual officers acting for and on behalf of the bank were. In any event I doubt whether an intent to cheat or deceive is a necessary part of this offence. An intent to impose upon the Commonwealth by an untrue representation is, but those two concepts are not necessarily synonymous.

The elements of the offence are stated by Owen J in *Bacon v Salamane* [1965] HCA 22; (1965) 112 CLR 85; [1965] ALR 843; 39 ALJR 27 as follows:

"The necessary elements of the offence in a case such as the present are (1) that the person charged imposed upon the Commonwealth or upon a public authority under the Commonwealth by an untrue representation, that is to say untrue to the knowledge of the person charged; and (2) that

the representation was made with a view to obtain, that is to say with the object or for the purpose of obtaining, money or some other benefit or advantage. If these facts are proved, the offence is committed."

I have no doubt that *mens rea* is an essential element of the offence charged, but I would doubt whether that *mens rea* should be defined as cheating or wilfully deceiving. I think it is better to use the exact words used by the statute rather than other words which take their meaning from the use of the same words in other statutes.

His third point was that there was no representation made within the meaning of s29B. In my opinion there was. The untrue representation, in my opinion, was one made by the appellant that he had a good and valid bankcard on which there was unexhausted credit and that was untrue to his knowledge.

The other matters referred to by Mr O'Halloran were matters for the jury. The accused first set up in relation to his state of mind that he thought that the money that his wife had was sufficient backing in the eyes of the bank for him to go over the \$500 limit. After that, when it was pointed out that he and his wife had separated, he resorted to two lines of defence; first, that he did not think that a \$500 limit was really a hard and fast limit, and secondly, that he could in any case repay the money. Those were matters for the jury to consider as to whether or not the accused possessed the necessary guilty state of mind. There was evidence on which they could come to the conclusion they did come to, that the accused was guilty on all counts as charged, and these were matters entirely within their province.

JACOBS J: I agree. The short answer, in my opinion, to the principal argument of the appellant is to be found in a comparison of s29B of the *Crimes Act 1914* (Cth.), as amended, with s29A. To succeed in a prosecution under the latter section the Crown must allege and prove an intent to defraud. No such intent is a necessary ingredient of the offence under s29B. Thus, it was of no avail to the appellant to say that he thought, and had reasonable grounds for so thinking, that he would be able, and would be given an opportunity, to repay the "drawings" on his bankcard in excess of the credit limit. Once it is established that he was aware of the limit, and knowingly exceeded it, with a view to obtaining the money that he did in fact obtain, but to which he was not entitled under the terms of his contract, he is within the terms of s29B. The offence created by that section is treated as a less serious offence than the offence under s29A, which involves a greater element of dishonesty, namely an intent to cheat or defraud.
