

31/81

SUPREME COURT OF QUEENSLAND — COURT OF CRIMINAL APPEAL

CATHERINE MARY MURPHY

Lucas, Kelly and Sheahan JJ

12 November 1979 — (1979) 1 A Crim R 398

CRIMINAL LAW – THEFT – PROCEDURE – ACCUSED BROUGHT BEFORE COURT – NO LEGAL REPRESENTATION – ACCUSED MAINTAINED INNOCENCE BUT PLEADED GUILTY – ACCUSED FOUND GUILTY OF CHARGE – WHETHER MAGISTRATE IN ERROR IN CONTINUING TO HEAR CHARGE.

The appellant was charged with false pretences which she allegedly committed by changing the labels on two handbags one being priced at \$10.97 and the other at \$5.78. She took the more expensive bag with the cheaper label and paid \$5.78 for it. It was further alleged that her changing of labels was observed by a security officer who spoke to her after she had paid for the bag. Police were summoned, the appellant was interviewed and at all times she maintained that she had not changed the price tags on the handbags. She was arrested and charged and taken before the magistrate during the afternoon of the same day. A police officer told her that she could be assisted by a duty solicitor if she so required it. When they arrived at the court, however, there was no duty solicitor present.

The magistrate followed the usual correct procedure before her plea of guilty was entered and after she had pleaded guilty. He asked her whether she wanted an adjournment to seek legal assistance; whether she understood the nature of the charge and that the nature of her plea had no bearing on the severity of punishment, and obtained from her a statement that nobody connected with the Police Department or any other person in authority, had suggested how she should plead. The prosecutor then read to the Court the circumstances in which it was alleged the offence occurred. Included in the statement of facts were two contradictory statements, the statement that she was seen to change the labels and the denial by the appellant that she exchanged those labels. The changing of the labels appears to have been an essential element of the charge of false pretences. The magistrate asked her whether she agreed with the facts to which she replied "Yes". According to a report furnished by the magistrate by direction of the Court, when the magistrate stated that the appellant had punished herself by despoiling her otherwise good reputation the appellant said 'But I didn't steal it'. The Magistrate purported to explain to her the difference between stealing and false pretences. She then said "I am guilty. I want to get it over with." The magistrate told her that he could not accept a plea given in those circumstances and that if a plea of guilty was to be maintained it must be without reservation and again she said "I am guilty."

HELD: (1) The magistrate should have appreciated that the accused was not in fact admitting the elements of the offence with which she had been charged, and in accordance with the well-settled procedure should have vacated the plea of guilty and directed that the plea of not guilty be entered.

(2) The appeal should be allowed, the conviction quashed and the order for restitution should be set aside.