

26/80

SUPREME COURT OF SOUTH AUSTRALIA — COURT OF CRIMINAL APPEAL

R v LOCKETT

Zelling, Jacobs and Legoe JJ

11 December 1979; 21 January 1980

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

CRIMINAL LAW – FALSE REPRESENTATION AS TO CREDIT – IMPOSING ON THE COMMONWEALTH – "PUBLIC AUTHORITY UNDER THE COMMONWEALTH" – PLEA OF NOT GUILTY – CONVICTION – STATUTORY INTERPRETATION: *CRIMES ACT 1914 (CTH)* S29B.

In October 1979, L. was convicted on seven counts of imposition, the first of which was in the following terms: "Geoffrey Lockett on about the 10th day of April 1978 at Adelaide in the said State did impose upon a public authority under the Commonwealth, namely the Commonwealth Trading Bank of Australia, by obtaining the sum of \$120 from the branch of the said bank at the corner of King William and Hindle Streets Adelaide by falsely representing that his Commonwealth Bankcard No. 496 66 147 990833 was in credit." He pleaded not guilty to all charges.

The jury found L. guilty as charged on all counts. L. appealed to the Court of Criminal Appeal and argued that:

(1) there could be no imposing on the Commonwealth provided the bank did not withdraw the credit facility;

(2) the bank was not deceived or cheated and this was a necessary part of the offence;

(3) there was no representation made within the meaning of s29B of the *Crimes Act 1914 (Cth.)*.

Further,

(a) that the accused did not think that the limit of \$500 was a hard and fast limit, and

(b) that the accused could repay the money.

HELD: Appeal dismissed (per Zelling, Jacobs and Legoe JJ).

(i) The first argument was based on a false assumption in as much as the accused could have obtained sums under \$200 from a number of branches of the Commonwealth Bank and exceed the \$500 limit.

(ii) It is doubtful whether an intent to cheat or deceive is a necessary part of the offence, whereas an intent to impose upon the Commonwealth by an untrue representation is. Those two concepts are not necessarily synonymous and it is better in directing the jury to use the exact words of the statute rather than other words which have a different meaning in other statutes.

Statement by Starke J in *Lamb v Toledo-Berkel Pty Ltd* [1969] VicRp 43; [1969] VR 343; (1969) 14 FLR 181, not followed.

(iii) The accused made an untrue representation to his knowledge that he had a good and valid bankcard on which there was unexhausted credit.

HELD further: That the appeal should be dismissed (per Jacobs and Legoe JJ) because, under s29B it is not necessary to prove an intent to defraud and thus it did not matter that the accused thought he could repay the "drawings" on his bankcard.

Per Zelling J, *quaere*: In the definition of "public authority under the Commonwealth" the words should be read down so as not to include every body corporate registered under the *Companies Ordinances* of the Australian Capital Territory, the Northern Territory or Norfolk Island, as it was not the intention of the legislature to include these.

ZELLING J: In February 1978 the appellant applied to the Commonwealth Bank Branch at Adelaide Street, Fremantle, Western Australia, for the issue of a bankcard. Permission for this facility was granted with a limit of \$500 credit. When the bankcard is used the characters from the card are embossed on to paper such as a sales voucher or cash advance voucher by the aid of a bankcard imprinter. When a customer wishes to use the bankcard facility to obtain a cash allowance, he goes to the inquiry counter of the bank. The bank produces a cash advance voucher which is a three part document. The voucher is placed in the imprinter together with the bankcard

and the characters are then embossed on to the form. The form is completed with the date and the amount of cash required and the customer signs the form. After certain checks within the bank a copy of the form goes on microfilm and the microfilm is forwarded to the issuing bank involved. Once the application has been passed for payment the customer goes to the teller who gives the cash and the card to him. A check is made before the money is given to make sure that the bankcard is a current and valid bankcard and that the name on the bankcard is not one on a special list relating to accounts as to which a fraud or frauds has or have been perpetrated. In relation to branches other than Sydney or Melbourne staff are allowed to process their own branch customers' bankcards accounts up to \$200 without having to get special authorization by telephone from the central office. Statements are issued monthly informing the customer of the state of his account. On the statements is noted in the top corner the limit placed on the credit and the statement itself shows the amount of available credit still to be used.

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. Under cross-examination Poynter had to admit that the bank was in fact charging credit charges on the total amount withdrawn by this man and not just the limit figure of \$500, that the bankcard facility was not withdrawn until July 10 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 must be said that the bankcard system as operated by this bank and branch was somewhat slipshod. Mr O'Halloran submitted before us, as he did before Judge Brebner, 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. Penalty: Imprisonment for two years."

It is one of a group of sections dealing with false pretences, false representations and untrue statements made to the Commonwealth or to a public authority under the Commonwealth. "Public authority under the Commonwealth" is defined as follows:

"'Public authority under the Commonwealth' means any authority or body constituted by or under a law of the Commonwealth or of a Territory."

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 10 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. The elements of the offence are stated by Owen J in *Bacon v Salamane* [1965] HCA 22; 112 CLR 85 at 92-3; (1965) ALR 843 at 847-8; 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 ..."

The trial Judge was clearly following the exposition of the section by Starke J in *Lamb v*

Toledo-Berkel Pty Ltd [1969] VicRp 43; [1969] VR 343; (1969) 14 FLR 181. 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 as Starke J thought it did. 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 and the jury must be deemed to have found that as part of the verdict. Mr O'Halloran complained, no doubt *ad misericordiam*, that this offence could only be committed in relation to the Commonwealth Trading Bank and not in relation to any other trading bank. That however, means that we must take the section as we find it and if the appellant is, as I think he is, within the words of the section, then the fact that there may be anomalies in relation to other banks cannot affect the administration of the law. The appeal should be dismissed.

JACOBS J: I agree with the judgment of Zelling J. 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.

The appeal should be dismissed.
