

40/87

## SUPREME COURT OF SOUTH AUSTRALIA

**CRAWFORD v BITAR**

Cox J

22 July, 7 August 1987

(1987) 47 SASR 509; (1987) 75 ALR 522; (1987) 27 A Crim R 255

**SENTENCING – CUSTOMS ACT OFFENCE – MAKING UNTRUE STATEMENT IN CUSTOMS FORM – ACCUSED FAIRLY TYPICAL OFFENDER – OF GOOD CHARACTER/SMALL QUANTITY OF GOODS UNDECLARED/OFFENDER TIRED – WHETHER CONVICTION AND GOOD BEHAVIOUR BOND APPROPRIATE: CRIMES ACT 1901 (CTH) SS19B, 20: CUSTOMS ACT 1901 (CTH) S234(1)(e).**

Upon arrival at Adelaide Airport, B. failed to declare that she was in possession of five tins of meat pâté. Upon the hearing of the charge, she pleaded guilty. The Magistrate accepted B's explanations that the offence was due to B's inadvertence and tiredness and taking into account her excellent character, imposed a conviction and released B. on a \$300 bond to be of good behaviour for 12 months. On appeal by the Crown against sentence—

**HELD: Appeal allowed. Recognizance cancelled. Fined \$100 in lieu.**

**1. Offences such as committed in this case are serious and there is a need to impose penalties which will operate as an effective deterrent to others.**

*Lanham v Brake* (1983) 34 SASR 578; (1984) 52 ALR 351; (1983) 74 FLR 284; (1983) 13 A Crim R 293, applied.

**2. The factors referred to by the sentencing Magistrate showed that the accused was a fairly typical offender and there was nothing about the case that could reasonably support the granting of a bond to be of good behaviour.**

**COX J:** *[His Honour dealt with two matters not relevant to this report. The first concerned a charge under s67 of the Quarantine Act 1908 (Cth.). The five tins of "meat pâté" seized by the quarantine officer were destroyed before the court hearing thereby denying the accused an opportunity to test and analyze the contents of the tins. No justification was offered for the immediate destruction of the tins and their contents, the Magistrate dismissed the charge as an abuse of process and His Honour upheld such order. The second matter concerned the order for costs against the informant on dismissal of the charge. In view of the provision in s127 of the Justices Act (SA), the Magistrate had no power to make the order for costs and His Honour set aside the order.] ... [24] The respondent was also charged, on complaint, with a related breach of s234(1)(e) of the Customs Act 1901 (Cth). The complaint alleged that on 12 December 1986 at Adelaide International Airport she produced to an officer a document containing a statement which was untrue in a particular, and the complainant then made a series of averments including a statement that the respondent brought in 5 tins of meat pâté etc, and that in the usual Customs form she had answered "No" to the following question -*

*"Do you have in your possession or in the baggage accompanying you ... food of any kind (including tinned or packaged), including meat, sausages, salami, ham, poultry, fats, eggs, milk, baby food, butter and cheese?"*

This complaint was called on for hearing as soon as the charge under the *Quarantine Act* had been dismissed as an abuse of the court's process. The respondent, pleaded guilty. Prosecuting counsel relied upon the evidence that had been adduced on the hearing of the information. Defence counsel submitted that the respondent was pleading guilty on the basis that she had untruthfully stated on her Customs form that she had no food with her in her [25] baggage. She admitted that the tins contained food but not that they contained any particular meat. Counsel relied upon the evidence of the respondent's good character and submitted that she should be dealt with under s19B of the *Crimes Act* 1914 (Cth). That would have meant dismissing the charge, because of the respondent's good character and other personal factors, or discharging her on a good behaviour bond without proceeding to a conviction. What the learned Magistrate did was to deal with the respondent under s20 of the Act. He recorded a conviction but released her, without passing

sentence, on a \$300 bond to be of good behaviour for 12 months The Crown appeals on the ground that the Magistrate's sentencing discretion miscarried.

In his sentencing remarks the learned Magistrate said -

"It seems to me that the manner in which the offence was committed is technical, however it is not one of a trivial nature and possibly the circumstances under which it was committed are not particularly extenuating. As counsel for the prosecution has quite rightly put, almost all people coming into the country are fatigued and would find themselves in a similar situation to the defendant. I do note however that she had worked overtime and was very tired.

I do bear in mind this defendant has a blameless record and is a person of excellent character as attested to by Mr Andruszko. She is a person who has come in and out of this country on a number of occasions and in her evidence she has told me that her omission on this occasion was inadvertent. It is not an excuse but it seems to me it should be taken into account by way of mitigation. She was tired at the time the offence was committed and had worked very long hours, in fact 27 days without a break prior to coming to Australia. She was also concerned as to whether she would be able to get a seat on an aircraft. In all the circumstances it seems to me, [26] notwithstanding the heavy penalty prescribed, that it is not inappropriate to apply the provisions of section 20 of the *Crimes Act*."

With all respect to the learned Magistrate, I am of the opinion that his discretion miscarried in this case. There was a series of appeals under these Acts in 1983 and 1984 in which several Judges of this Court emphasized the need for realistic penalties for even small-scale breaches of the *Quarantine Act* or *Customs Act* provisions by ordinary travellers of good character. See, for example, *Lanham v Brake* (1983) 34 SASR 578; (1984) 52 ALR 351; (1983) 74 FLR 284; (1983) 13 A Crim R 293, *Tsorvas v Van Velsen* 37 SASR 490, *Gallego v Holmden* (1984) 35 SASR 198, *Lanham v Cafcakis* 113 LSJS 167 and *Lanham v Thorne* 114 LSJS 427. There was nothing "technical" in my view, about the respondent's offence, and I am inclined to think that that misdescription alone is enough to vitiate the learned Magistrate's decision.

Furthermore, to show that the respondent was of good character, that the quantity of undeclared goods was small, and that she was tired when she got to Adelaide Airport, simply showed that she was a fairly typical offender. On the other side of the ledger there were the seriousness of such offences and the need to impose penalties that will operate as an effective deterrent to others. I refer to my remarks on this subject in *Lanham v Brake* in order to save repeating them here. An exercise of the s20 discretion required more than the mere establishment of one of the specified conditions. In my opinion, there was nothing about this case that could reasonably support the exercise of the discretion in the respondent's favour. To allow the Magistrate's order to stand would be to subvert the sentencing policy that is indicated in the penalty provisions of the *Customs Act* and explained in the decisions of this Court that I have cited.

The appeal must be allowed. If the respondent has entered into the recognizance under s20, it will be cancelled. As the [27] Magistrate has evidently accepted the respondent's evidence that the offence was caused by inadvertence, I impose a fine of \$100 in default 2 days' imprisonment. One month to pay.

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