

Judgment 12/2004

**Sarah Elizabeth Young – Court of Appeal
(Criminal Appeal 316) – 20 May, 2004**

Theft – appeal from conviction – the test as set out in the appeal of Ogier and Le Noury (1989) 7. GLJ – ample evidence on which the Jurats could have reached guilty verdicts – appeal dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 20th day of May, 2004 before Sir Philip Bailhache, Presiding, Sir John Nutting Bt., QC. and Jonathan Philip Chadwick Sumption Esq., QC.,

THE LAW OFFICERS OF THE CROWN

V.

SARAH ELIZABETH YOUNG

Appellant

In the appeal by the Appellant from the conviction imposed on her by the Royal Court on 16th January, 2004;

THE COURT, having on 19th April, 2004 heard Advocates Miss S. L. Brehaut and G. D. McKerrill for the Appellant and the Crown respectively and having DISMISSED the appeal on that day and RESERVED its reasons, this day ISSUED JUDGMENT in the terms attached hereto.

K. H. TOUGH
Registrar of the Court of Appeal

IN THE COURT OF APPEAL IN THE ISLAND OF GUERNSEY

THE LAW OFFICERS OF THE CROWN

V

SARAH ELIZABETH YOUNG

Appellant

Judgment of the Court of Appeal

THE CONVICTION

1. On 8 January 2004 this applicant appeared before the Royal Court to answer an indictment containing 11 counts. At an earlier hearing in the autumn of 2003 she had pleaded not guilty. Between the two appearances the indictment had been amended in a way immaterial to this appeal and on rearrangement the applicant confirmed her plea of not guilty to all counts.

2. The Deputy Bailiff presided at the trial which lasted seven working days. On 16 January 2004 the applicant was convicted on every charge except count 9 which had been withdrawn from the Jurats' consideration during the trial because the original documentation supporting it was discovered to be missing.

3. The Deputy Bailiff adjourned sentence until 19 February 2004 pending preparation of a Probation Report. On that date the applicant was sentenced to serve two years' imprisonment on each of the ten counts, concurrent.

4. On 23 January 2004 she filed notice of her intention to seek leave to appeal. This Court heard the application for leave to appeal against conviction on 20 April 2004 and dismissed it indicating that reasons would be given at a later date. The applicant abandoned her appeal against sentence.

5. We now give our reasons for dismissing the application.

THE EVIDENCE

6. The counts in the indictment alleged a course of theft from the Board of Health of the Princess Elizabeth Hospital by whom the applicant was employed at the material time. The sums of money in the

counts varied between £1,538.87 and £6,298.75. The total sum stolen was £33,776.06. There was no issue

at trial as to the fact of the theft. The task for the Jurats was to decide whether the Crown had proved that the

applicant was the thief

7. The applicant was first employed at the hospital as a chef; but in March 1999 she was promoted to supervise the restaurant and it was in that capacity that the Crown alleged she had availed herself of the opportunity to steal money.

8. The Crown asserted that the thefts occurred on separate occasions between 5 April 2001 and 5 March 2002, but they were unable to particularise the dates. The period defined in each count invariably covered about a month, although the evidence revealed that in practice the potential periods of theft were much shorter.

9. The applicant, who was born in 1970, had commenced her employment at the hospital in July 1997; but after her promotion, and as part of her duties as restaurant supervisor, she was required to ensure that money (less the float) was regularly extracted from the till, usually at the end of each of the three meals per day which were served in the restaurant.

10. She worked a 7.00am to 3.00pm weekday shift. It followed that she was available to cash up after breakfast and lunch but not after dinner unless the money was left in the till overnight and collected by her before breakfast the following day.

11. The process included ringing up the till in order to record on a till receipt the running total of the amount which the restaurant had taken and, by deduction, the amount extracted from the till. The cash machine automatically applied a sequential number to each receipt. That receipt, with the sum of money to which it corresponded, was then bagged and secured in a safe in a storeroom, which also served as the applicant's office, on the ground floor of the hospital. In practice the bags were allowed to accumulate, particularly over the weekend during which the applicant did not work. The applicant was responsible for safeguarding these cash sums.

12. The system also made provision for the applicant to compile a banking schedule on a daily (weekday) basis itemising a breakdown into coins and notes the total sum collected, before being removed to the chief cashier for banking.

13. Accordingly on each occasion the chief cashier should have received a sum of money, a banking

schedule and till receipts, all of which corresponded. The office of the chief cashier was about 100 yards distant from the applicant's office and situated on the first floor of the hospital.

14. In fact the instruction to prepare a banking schedule on such a basis was honoured in the breach rather than the observance, not just because the applicant did not work at weekends, but also because the applicant, through overwork as she claimed, could not comply.

15. The evidence before the Royal Court disclosed that the only document which was checked in the cashier's office against the money was the banking schedule. Once that check had taken place the money was banked.

16. In March 2002 there was an investigation by the Hospital Board and subsequently by the police. These enquiries revealed that a number of till receipts were missing. These missing till receipts were the basis for, and corresponded with, the sums alleged to have been stolen in the counts in the indictment. It was the case for the Crown that the applicant had ascertained that the chief cashier did not trouble to check the till receipts and, in particular, to verify that they were all present and in sequence when they were delivered with the cash and the banking schedule. The Crown claimed that the applicant, taking advantage of the omission, regularly stole sums of money and, to conceal the thefts, also removed till receipts reflecting those sums.

17. However this was not the only omission in the system adopted by the Hospital Board and conceded by the Crown. No audit was made of the number of meals prepared and paid for. No records were available for the period prior to April 2001 and it was therefore impossible to say whether or not money had gone missing before that date.

18. This was a gap in the prosecution case of some consequence because the Crown claimed to be able to show that whenever money could be proved to have been stolen the applicant was on duty. Miss Brehaut in her submissions to us laid stress on this lacuna because, she said, the absence of records prior to April 2001 deprived the applicant of the opportunity to demonstrate that money might have been stolen on an occasion, or on occasions, when she was absent from duty and therefore not available to commit theft.

19. The case for the Crown depended on circumstantial evidence. From the moment of her arrest on 22 March 2002 the applicant maintained her innocence, a claim which she repeated in the witness box.

THE SUBMISSIONS

20. Advocate Brehaut submitted that the Crown had failed at the trial to prove the case against the applicant. She asserted firstly that they had not eliminated other potential thieves, secondly that they had failed to demonstrate how the monies had been stolen in a case which plainly exhibited a system of dishonest conduct, and thirdly that they had failed to define when the monies were stolen in the period between their presence in the till and their receipt by the bank

21. As to the number of possible candidates for the perpetration of the theft, Miss Brehaut pointed out that the Crown had been unable to call five witnesses, all of whom had been employed at various times as cashiers in the restaurant and all of whom had had access to the till and the storeroom.

22. Furthermore, she claimed, it was not clear from the evidence whether the thief had stolen the cash direct from the till or from the safe in the storeroom, periods she defined as the first and second potential periods for theft. She submitted that the evidence also demonstrated the real possibility that the monies could have been stolen at a third stage, after the applicant had completed the banking schedule and while the money was en route to the chief cashier. The applicant was responsible for the safe transmission of the money to the cashier's office but on occasions entrusted others to deliver the money. Miss Brehaut identified a total of nine employees who had had access to the till in the restaurant, and approximately the same number who had had access to the storeroom and therefore to the safe, which was not always locked and whose key was kept in the restaurant.

23. She also relied on the fact that many of the missing till receipts related to encashments at the weekend. She insisted that the failure of the Crown to show at what point during the process described above the money and the till receipt had gone missing served to illustrate the possibility that the takings could have been stolen at a time when the applicant was not on duty. She submitted that it was incumbent on the Crown to exclude such a possibility in order to permit the Court properly, fairly and reasonably to convict the applicant.

THE LAW

24. Miss Brehaut based her submissions firmly on the first limb of Section 25(1) of the Court of Appeal (Guernsey) Law 1961

"The Court of Appeal... shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the. evidence"

25. She conceded that English law, which permitted cases to be set aside until 1995 on the ground that the verdict was "unsafe or unsatisfactory" (section 2(1) of the Criminal Appeal Act 1965) and which subsequently applied a test limited to whether the conviction was "unsafe" (section 2 Criminal Appeal Act 1995), had no place in Guernsey law. She recognised that the test to be applied here, as amplified in *Law Officers of the Crown v Ogier and Le Noury* (1989 GU 17) was more restricted: "It is not sufficient to allege that a verdict was against the weight of the evidence nor sufficient to show that a case was a very weak one or that the Appeal Court felt some doubt as to the correctness of the verdict: a verdict will only be set aside in the rare cases where it was obviously and palpably wrong" .

26. However persuasively expressed, Miss Brehaut's arguments are not in our view sustainable.

THE RESPONSE

27. Although not determinative of the appeal, it is a fact that no submission was made at the close of the prosecution case by the Advocate who represented the applicant in the Royal Court. Since all the points urged by Miss Brehaut before us were established during the presentation of that case, it is surprising, if those arguments are correct, that an attempt was not made to seek to persuade the Deputy Bailiff that there was no case for the applicant to answer.

28. In the light of our conclusion on the merits of Miss Brehaut's submissions we are not surprised that no submission was made to the Royal Court, nor do we conclude there was a sensible possibility that such a submission could have succeeded.

29. It was not disputed at the trial, nor indeed on this application, that the applicant was a potential candidate for the theft of these monies. The question for the Jurats was whether there were signals which pointed clearly to her guilt.

30. It was an almost inevitable conclusion on the facts of the case that these thefts had been committed by a single individual with regular access to the proceeds of the restaurant till and who adopted a similar system of theft on each occasion.

31. Against that background the Crown could demonstrate that on every date on which money and till receipts must have been removed each of the other nine candidates for the theft, with one exception, had been absent on at least one occasion. The leave records of all those who had ready access to the till and to the storeroom were produced in evidence to demonstrate the coincidence that, one cashier excepted, only the applicant had been present on every occasion when money and the matching receipts had gone missing.

32. This aspect of the case could therefore have caused a tribunal to conclude that if the thief was someone other than the applicant that person chose always to steal on occasions when the applicant herself was available to steal.

33. The Crown conceded that the fact that the applicant did not work at weekends would have prevented her from removing any money between 3.00pm on Fridays and 7.00am on Mondays. It was proved that some of the monies stolen included the proceeds of weekend meals. But the process of preparation for banking described above, necessarily included the possibility that the thief had stolen such money, and the supporting till receipts, some time during the very early part of the relevant week before the banking schedule had been compiled.

34. The Crown could also point to the fact that some of those nine other candidates consisted of individuals who on occasions relieved the applicant of her duty to compile the banking schedule. On these occasions the Crown could show that no money went missing. This aspect of the case could well have caused the tribunal to conclude that if the thief was someone other than the applicant, that person chose to commit theft on occasions limited to those when the applicant was responsible for compiling the banking schedule.

35. The Crown called evidence that it was the applicant's practice invariably herself to take the accumulated till proceeds to the cashier's office and that the days when she delegated this task were limited to four occasions over the period concerned. There was no evidence before the Jurat's that money had gone missing on any of those four occasions.

36. The applicant, on the other hand, asserted that she had delegated this task on at least 100 occasions in the ten-month period covered by the indictment. Undoubtedly the Jurat's were entitled to disbelieve the applicant on this matter, the more particularly because the evidence which contradicted her came, inter alias, from the chief cashier who had first identified that monies were missing and who had raised the alarm. If the Jurats accepted this evidence in preference to the applicant's assertion, it followed that the opportunities for theft, and the candidates for its commission en route to the chief cashier's office (the third period of possible theft), were limited to the applicant herself.

37. But there was other evidence which made it inherently unlikely that someone (other than the applicant), would be able to steal en route to the cashier's office and conceal the theft from the chief cashier. The steps preparatory to banking, described above, necessarily predicated a correspondence between the banking schedule and the cash. The evidence was that the schedule and the cash were invariably checked in the cashier's office and no receipt was given until the chief cashier was satisfied

that there was such a correspondence.

38. If, therefore, the emissary had been the thief on any or all occasions, it would have been essential for him/her not only to remove an amount of cash, and the till receipt/receipts to match it, but to remove the existing banking schedule and replace it with one which corresponded with the denominations of notes and coins left behind. The Jurats might have been excused for thinking that once the schedule had been compiled the possibility of theft by someone other than the applicant was somewhat fanciful.

39. In all the circumstances the Jurats could well have concluded that the most likely occasions for the thefts were limited to periods one and two. Since the pattern of thefts usually consisted in the removal of the proceeds of at least two or three meals from the restaurant at any one time, and since the proceeds of each meal, including the relevant till receipt, were placed into separate bags and were invariably preserved in the applicant's office before the banking schedule was compiled, it would have been easy for a person with access to the office to steal two or three of these bags, and their respective receipts, prior to the compilation of the schedule.

40. But care would have to be taken to ensure that the total sums of money presented to the chief cashier on each occasion were sufficiently similar to avoid raising the suspicion that any money was missing. It was open to the Jurats to conclude that the person with the best opportunity to steal prior to the compilation of the schedule, and to avoid the arousal of that suspicion, was the applicant herself. It was she who was responsible for the cash; it was she who was responsible for the compilation of the banking schedule; and it was she who decided what sum to accumulate before she completed the schedule.

41. Moreover an analysis of the dates on the banking schedules reveals that, notwithstanding the instructions to compile a schedule for each day on which she was on duty, the applicant often allowed a week to pass between the occasions. There was no doubt this was in defiance of her instructions, as she conceded in evidence, though she gave an excuse for this omission which was contradicted by witnesses for the Crown.

42. But the advantage which she gained from this defiance, if indeed she was the thief, was the ability to make an assessment on each occasion of how much she needed to "declare" to the chief cashier to avoid raising the suspicion to which we have referred, and how much, therefore, she could safely steal. The fact that the thefts continued for nearly a year before discovery was, according to the Crown, an indication of the success of this policy. Since the applicant was responsible for deciding when she would compile the next banking schedule, she alone had the ability to make the necessary assessment.

43. It was therefore clear that the thief had managed to avoid raising any suspicion in the mind of the chief cashier that large sums of money were regularly being stolen. But if the thief was someone other than the applicant, the thief had also succeeded in hoodwinking the applicant about the thefts. Since the applicant had day to day responsibility for the till proceeds, it might well be said that it was strange indeed, if she was not herself the thief, that she had failed to appreciate that large sums of money were disappearing on any of the ten occasions and over the eleven month period defined in the indictment. The nature of her responsibilities and her involvement rendered unrealistic the notion that she could have honestly failed to notice these defalcations.

THE CONCLUSION

44. In our view there was ample evidence on which the Jurats could have reached guilty verdicts in this case. We found nothing in the evidence to warrant the conclusion that they was "obviously and palpably wrong" in their findings.

45. It was in these circumstances and for these reasons that we dismissed this application.