

Subj: **Skinner.doc**
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IN THE HULL CROWN COURT

THE QUEEN

- v -

JANET LOUISE SKINNER

CONFISCATION PROCEEDINGS

SKELETON ARGUMENT ON ABUSE OF PROCESS OF THE COURT

Brief facts of the case

1. Prior to this prosecution, the Defendant was a 35 year old woman of good character who was working as a sub-postmistress at the North Brandsholme post office in Hull. She had held the position for nearly two years from 27th May 2004 until 31st May 2007. Prior to her appointment, the post office had belonged to United News Group who had employed the Defendant since about 1995.
2. There is a computer system in all post offices to aid in accounting. The system indicated that the North Brandsholme post office had a £40,000 holding of cash as at May 2006. Cash holdings of that amount must be unusual because it triggered an internal audit inspection by post office managers. The audit found that there was no cash in that amount at the branch but rather revealed a shortage in the accounts of £59,175.39.
3. The Defendant was questioned about the missing cash and stated that she suspected an employee called Katherine Ayers of stealing the money. She accepted that she had tried to hide the cash losses by inflating the figure in the cash holding account. She had not contacted the Post Office fraud investigation department about the losses so that they could investigate the matter at an early stage.
4. The Defendant pleaded not guilty to the theft of the money but guilty to false accounting at the PCMH on 5th January 2007. This plea was acceptable to the prosecution.
5. The prosecution indicated at PCMH, after the acceptable plea to false accounting, that

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confiscation proceedings would be commenced.

6. The Defendant was sentenced to 9 months imprisonment for the offence on 2nd February 2007. His Honour Judge Barber indicating that this was a breach of trust case where the debit grew larger through the Defendant's false accounting.

Issues in outline

7. It is submitted that the prosecution did not seek a trial on the theft count because they could not prove that the Defendant stole the money. In other words, there was no reasonable prospect of a successful prosecution for theft.
8. In asking the learned Judge to set a time table at PCMH for confiscation proceedings, it is submitted that the prosecution decided that they would recover the money from the Defendant for the theft without having to prove that she stole the money.
9. The Defendant states that an employee by the name of Mrs Lyell has been charged with the theft from the branch. The Crown is asked to provide details of the prosecution at the next hearing.
10. The prosecution are entitled to bring such an application in law, the central issue is whether they ought to be allowed to in the circumstances of this case.

The Law

11. It is conceded that an application for confiscation can be brought under section 6 of the Proceeds of Crime Act 2002 in this case.
12. It is further accepted that this is not a 'criminal lifestyle' case but rather the Court must 'decide whether she has benefited from her particular criminal conduct'.
13. Lastly, it is conceded that if the Court decides that she has benefited from her particular criminal conduct, the Court must decide the recoverable amount and make a confiscation order requiring her to pay that amount, unless the Defendant shows on the balance of probabilities that the available amount is less than the benefit, in which case the Court should make an order in that amount.
14. The amount of £22,329.00 being the value of the equity in the house set out at page 6 of the prosecutor's statement is accepted to be the available amount for that purpose. Subject to liberty to apply for a certificate of inadequacy should the sale of the house fail to net that sum.

Submissions

15. It is submitted that the prosecution have manipulated or misused the process of the Court in bringing this application by attempting to take unfair advantage of a technicality – i.e. the availability of this application to them when the ability to prove the theft was not available to [1]

16. ~~Dr~~ Roger Ormerod defined the jurisdiction of abuse of process as follows:

"The power to stop a prosecution arises only when it is an abuse of the process of the court. It may be an abuse of process if either (a) the prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by the law or to take unfair

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advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation or conduct of
[2]

17. It is submitted that prejudice to the defence is a necessary element for her to establish where it is suggested that the prosecution have manipulated or misused the process of the Court. Such requirement is only required in cases of delay.
18. When one looks at the cases in relation to Abuse of process set out in Archbold 2007, (paragraphs 4-57 to 4-61) it is submitted that a flavour emerges of what is and what is not an abuse of process. It is submitted that that flavour arises as a matter of a 'gut feeling'. It is further submitted that this prosecution application gives rise to such a gut feeling that the application is wrong and unfair.
19. Whilst it is accepted that the Defendant's guilty conduct hid and may have even increased the loss to the Post Office, as a matter of evidence and record she has not been shown to have stolen any money.
20. It is the central essence of the criminal process in this country that a person is innocent until proven guilty. In bringing confiscation proceedings, the prosecution are able to dispense with the 'formalities' of proving the Defendant guilty of the theft of the money, but are able to proceed as if she had stolen the money as far as confiscation proceedings are concerned.
21. It may be cynical, but nevertheless true to submit, that the prosecution were aware of this technicality when they decided to accept the plea they did.
22. To allow the prosecution to bring this application in the specific circumstances of this case is unfair and the Court is respectfully invited to stay any such application as an abuse of process.

Christopher Dunn

29th May 2007

Sovereign Chambers
46 Park Place
Leeds
LS1 2RY

[1]

R v Horsham JJ., ex. P. Reeves, 75 Cr App. R. 236 DC

[2]

R v Derby Crown court ex parte Brooks (1984) 80 Cr app R 164.