

Susan Sinclair letter

07/03/2022, 15:26

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Aberdeen
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7 March,2022

SCCRC,
4th Floor,
17 Renfield Street,
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Attention of Daniel Fenn

Dear Sir,

Review Susan Sinclair DF/2914

I refer to previous communications and now enclose herewith signed copy of my Report in respect of the conviction of the above named, which is now subject to review.

As I indicate in my Report it is far from complete due to the lack of information and documents available to me. I hope that it will be of some assistance.

Please acknowledge receipt.

Yours sincerely,

GRO

Sheriff Malcolm Gaden (retired)

Sheriffdom of Grampian Highland and Islands at Peterhead

Report by

Sheriff (retired) Malcolm Garden

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PF v Susan Sinclair

I am requested to write a report in respect of this prosecution and conviction and have agreed to do so subject to the following clear caveats.

FIRST, this case took place in April 2004, almost 18 years ago. As a result I have little or no actual recollection of any details.

SECOND, I have not been provided with any paperwork, other than copies of my own notes.

I do not have a copy of the complaint and cannot accurately assess the charge(s).

I do not have a copy of the extract conviction and cannot accurately assess the outcome.

THIRD, and of greatest concern, I do not have access to the Joint Minutes which were submitted by the parties. In my experience solicitors often failed to understand that the content of a Joint Minute is not evidence but fact which must be accepted by the Court. Accordingly, in absence of copies of those Minutes there are a significant parts of the evidence, which must be held as established fact, and which are not available to me. I can tell from my notes that the submission of the Minutes resulted in the Crown not leading a number of their witnesses.

There are, accordingly, potentially critical parts of the prosecution case which have been lost.

The Crown's first witness was Margaret McKay who carried out holiday relief work for the Post Office in North East Scotland. She had operated in this capacity at Stuartfield Post Office in December 2002 then again in February 2003. On her first visit there was no handover. She found a balancing discrepancy whereby the cash balance did not match the "snap shot" balance. She checked it 3 or 4 times. She telephoned the accused who told her that she had spotted the discrepancy on the

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previous Friday balance. She had been very busy. The explanation did not make sense as the balancing was normally done on a Wednesday. She phoned the accused again and she said she had been in touch with the Post Office regarding the error. The witness phoned the Post Office as she had to report her findings. The accused then phoned her on her second day there to tell her not to worry about the discrepancy. The witness then proceeded to undertake the balancing process, did not find the missing figure, which she thought was circa £10,000, documented and declared the discrepancy and then left at the end of her relief period.

She returned to undertake holiday cover in early February. The accused was on holiday. There was again no handover. She was asked to check the balance on the morning of her return which she would have carried out in any event. There was still a discrepancy, now slightly higher than before, around £10,500.

The witness was shown Crown Production No 1 which was a typed note of instructions from the accused. It mentioned the discrepancy and stated (here my notes are not entirely clear) "Have found the £10K in Giro error but have to still to process as if we had it ...should be getting an error thingy. Do your daily balance. Don't panic. What a bother. Silly me." The witness contacted the Post Office again and was told to remain there for the rest of the holiday period until the accused returned. There was no further communication about the missing money. She was not involved in any audit.

The witness was cross examined on general Post Office procedure and processes. There was a computerised system which recorded payments received. If an automated payment a receipt was produced and a copy kept at the Office. If a manual payment it was similar. Giro slips were sent off daily. All cash entries were recorded. The figures in the computer would only be correct if the correct figures had been inputted. They were all separately recorded on the computer. Any error in an entry should be noted by the double check done every night. There had been no external audit done in the period between her two visits.

On re examination the witness confirmed that she had checked for any payment slips which had not been recorded on the computer but had found none. Each day a print off was obtained from the

computer and showed a balance which should be the same as the actual cash balance in the office. On each occasion she was there the discrepancy was slightly different.

The second witness was Anthony Dean Robertson, an Investigation Manager for the Post Office, who was based in Gateshead. He had been instructed to investigate a cash discrepancy at Stuartfield Post Office. He had been shown a statement from the holiday relief Postmaster. He confirmed that the Post Office dealt with numerous different cash transactions. The system operated was the Horizon Computer System. It had a cash period from Thursday morning to Wednesday evening. A daily cash declaration should be made but not all offices did that. They were required to make a weekly declaration balancing their cash they held with the computer record. All transactions should have back up paperwork. The input to the computer should be made when the customer was present. At the end of the day a print out should be taken summarising the transactions. In a small but busy office it was not essential to balance at the end of each day. They could do the reconciliation at a quiet time later. He could not comment on training detail but knew that all Post Office employees received instruction and training.

They had been advised of the discrepancy at the end of December and again in February. They had decide to leave an audit until the Postmaster returned to work. They had gone to audit on 20 February, when he and two colleagues had attended there at 8.30 am. He identified the accused as the sub Postmaster whom they met there that morning.

At the start of the audit the accused made a statement that there was "a serious shortage of cash." This was noted and signed by the accused. A check revealed that there was a shortage of approximately £10,700. This was put to the accused whose noted and signed response was "quite possibly." He was shown Crown Production 2 and confirmed this to be a print out from the computer after his colleague had inputted his count and which showed a discrepancy of £10,749.58. That sum was missing. He spoke in some more detail to that document. There was no search of the office for additional paperwork. The accused was later interviewed, under caution, at her home. He was shown Crown Productions 3 to 7 which were weekly accounts obtained from the Stuartfield Post Office which showed minor discrepancies for the weeks they represented.

HERE I SHOULD STATE THAT I HAVE IT NOTED THAT AT THIS POINT A JOINT MINUTE WAS LODGED "DEALING WITH THE TRANSCRIPTS." I would presume, but cannot be certain, that this would have confirmed the accuracy of those transcripts and perhaps an acceptance of their content as fact. There were 4 tapes, three from the interview on 20 February and a fourth from a separate interview in Aberdeen on 27 February.

In interview she stated that the "cash had been off for weeks." She had claimed that she had phoned the helpline (for postmasters) and asked for time to investigate. There was no recent record of such a call. The only record of a helpline call was in June 2002 when she had mentioned a £4,000 shortage and asked if she could put it in a suspense account. She could not explain where that £4,000 had gone nor why she had not declared it in her weekly accounts. If it had been an error then an error message would have been generated by the system. She had declared minor discrepancies but not the £10,000 discrepancy. She offered no explanation. She said that she did not have the money (£10,000). She thought it was just errors.

He confirmed that the system was that errors reported or found would result in a error notice being issued to the Postmaster requiring rectification within 3 months. There was nothing of that nature in this case. Small errors had been reported, going both ways, but nothing to indicate or explain the £4,000 or £10,000 discrepancies.

In interview she had stated that she had debts of around £16,000 but denied taking money from the Post Office to pay off some of these. When asked why she had lied to the substitute Postmaster about the discrepancy she denied lying but said she did not want the substitute to feel responsible. She could not say how long the discrepancies had existed or how it had increased from £4,000 to £10,000. She gave no indication of what she thought the error was so that could not be checked.

A cash account containing her signature was produced to her and she admitted that it showed an amount overstated by over £10,000 which she knew to be false. She knew that statement to be criminal and dishonest. She was shown the cash statements for other weeks which she admitted she

had falsified. She agreed that was wrong and dishonest. She could give no explanation of where the money had gone. She had denied theft or negligence but accepted that it had been incompetence. The discrepancy had not suddenly increased but had done so gradually. She did not think anyone else could have taken money from the Office. The final meeting took place with her Union Representative present. She agreed she would pay the money to the Post Office because she considered her contract required her to do so but not because she was criminally responsible.

Under cross examination the witness confirmed that the accused was an agent of the Post Office and had a manager. There required to be a weekly reconciliation of the cash account. Only the manager could give permission for this to be deferred (as for holidays). It was bad practice for a postmaster to stockpile entries and put them through on the balancing day (Wednesday). Giro's had to be banked on the day. He accepted that human error sometimes meant these rules were not strictly adhered to. The accused had mentioned that she had some part time help. He had not interviewed the two people involved.

He was not able to speak to the audit procedures nor the precise operation of the auditor. The contact manager was present at the investigation as it was for him to decide on further procedure. Here after the investigation he had cautioned and suspended the accused. During the investigation she had denied taking or using the missing money.

At this point the Court adjourned and on the advice of parties allocated two further days for evidence.

On resumption of the case (on 7 April) there was a delay in starting as I was advised that parties were negotiating a second Joint Minute. I was advised that this Minute would reduce the number of Crown witnesses to be called to one more. I do not have a note of how many further witnesses would otherwise have been called.

The Crown's final witness was Alex McKenzie the Post Office Auditor from their Audit Team. He had 14 years of auditing experience and had worked in Post Offices prior to becoming an auditor. He



confirmed that he and others attended at the sub Post Office at Stuartfield for a surprise audit. He met the accused whom he identified as the sub Postmaster. He had checked the cash in the office against the most recent cash declaration which had been declared by the accused the previous night. There was a discrepancy of over £10,000. There was also a small stock discrepancy of around £40.00. The accused had said to him that she was aware of the shortage but had not thought it was that much. Cash held in Offices could vary depending on the amount and type of business they undertook. He expected an office of this size and location to hold around £15,000 to £16,000 in cash. He looked at certain of the productions containing cash declarations from the accused and noted these at approximately £18,000, £25,000 and £36,000. The discovered discrepancy seemed to be approximately 50 to 60% of the normal total sum held. It was not his function to trace where the money had gone although he could analyse recent errors.

Under cross examination he confirmed that there was no system of regular audits and that most audits were surprise audits. He confirmed that the accused had not been subject of an audit from the time of her starting with the Post Office. That was not a surprise to him. The Horizon system was used to input everything including money and cheques paid in, bills paid, pensions etc., It covered the whole spectrum. It was not his remit to check errors. That could be done at various places depending on which items were involved such as Giro banking, Premium and Saving Bonds.

On re examination he confirmed that the shortfall was the difference between the actual cash held on the day of the audit and the declaration made by the accused on the night before.

The Crown then lodged the second Joint Minute and closed it's case.

The accused elected to give evidence on her own behalf. [GRO]
[GRO] She started as temporary Sub Postmaster at Stuartfield in April 2002 and was made permanent in August 2002. Prior to that she had worked at Ellon Post Office as a manager but had received little formal training. She had been shown various exercises and a Trainer had appeared on a few days but generally she had been told by the Postmaster to get on with it. She lived [GRO] and heard that the sub postmaster there wanted

to relinquish the position. She offered to help, put in an application and was appointed without interview. She worked largely on her own with someone coming in to cover if she had leave. There was an audit done before she started and someone came through to check before she was given the position permanently. There was also a shop selling various items. The stock was worth about £5,000, most of it being cards. The shop was open seven days each week but the Post Office six days with Wednesday and Saturday being half days.

The post office dealt with various transactions including paying bills through Girobank, with no upper limit, National Savings accounts, Alliance and Leicester Building Society accounts, Bonds and Pension benefits. It was a busy rural office covering a wide area. It was used by businesses in the area and would handle deposits of £1,500 to £3,000 at least two times per week. She recalled the biggest transaction she dealt with was the purchase of a £10,000 bond.

The office used the Horizon accounting system. It involved a lot of specific procedures. It was connected to Headquarters. The shop business was conducted separately through the till. There was a bar code scanner for telephone, gas and such payments. If you inputted a wrong figure the system would tell you. It was complicated. Paperwork was also required. On a busy day, such as Monday, balancing was done at the end of the day. Stock was counted only on Wednesday. Cheques, Giro slips and National Savings vouchers were sent at the end of each day, each to different places. Sometimes post was also sent at lunchtimes. As it was a small office she did not balance every day. Usually she did the cash declaration daily but sometimes left it to the following day. Errors could conceivably occur as the double nought key was next to the nought key but she did not recall making any such error. If customers came back and claimed that they had handed over too much, such as two notes sticking together, she would believe them.

In June 2002 she became aware of the cash account being out of balance by a significant amount. She sought help from the help desk and was told not to put the figure in a suspense account but to contact her line manager. She knew he would not get back quickly and asked if she could leave it. She was told that she was responsible personally and to take care. she did not contact the line manager. The system said she should have £4,000 more than she actually had in her cash reserve.

She had been off one day and thought there might have been an error then. She searched for the error and in the meantime kept reporting the cash balance as the figure shown on the computer. The balance had been correct the previous week so she thought she would find the error easily. She had one previous problem with a £500 discrepancy but had managed to sort that. She had been sent £10 notes in a £20 note bag. It had taken one month to resolve. There had also been an issue which had arisen before she started and which had taken over one year to resolve.

The £4,000 discrepancy did not resolve. It gradually grew. She thought that she must be processing something incorrectly. The shortfall gradually increased to around £10,000. The increases were never in the same amount. There were no calls from the Post Office to see if the situation had resolved. She did not call them again. There were three ladies who helped part time. She did not ask them to balance when they were in. She had not told them of the shortfall issue but thought they would have seen that the declarations were not accurate.

In February 2003 [GRO] Mrs McKay had provided cover. She had also provided cover for some days at Xmas 2002. She had not then told her of the discrepancy but when Mrs McKay had come to balance she noted the problem and phoned her. She had told the relief that it was her responsibility and not to worry. There had been email contact [GRO] when Mrs McKay had confirmed all was fine. On the Wednesday when she returned she (accused) had inputted the balance. The auditors then appeared without warning on the following day. She had thought this was as a delayed result of her first contact. She was aware of the £10,000 deficit and agreed that she was contractually liable to pay it back. She had paid it back.

She estimated her net income at [GRO] per month. This was from her minimal salary, commission, and drawings from the shop (£150). She had very little savings, perhaps £100. Her rent was £150 per month, Council Tax and Rates about £9 or £10 per month and Electricity only £60 per year. The persons who helped part time were on minimum wage based on £36 per day with no more than two days each month. She stayed with her partner. She gave the Post Office investigators her full financial details.

She accepted that the initial deficit error had increased from June 2002 to February 2003 to £10,700. She did not take any money. She did not gain personally. She had never been convicted of a crime of dishonesty.

Under cross examination she accepted that she ran a car, paid for prior to her taking the position. She had considerable debts of approximately £17,000 on which she made payments of £5/600 per month which together with her rent used up all of her income, leaving nothing for food or clothes. She denied taking money, from time to time, from the Post Office to finance her problems. Her partner supported her financially. She had taken this position rather than a better paid one for the benefit of the community who had supported her when she had split from her husband. From June when the £4000 problem arose she had hoped some kind of error message would come through the system to explain the problem. No one picked up on the error. She did not know where the money had gone. She did not believe it to have been taken by any of the people who helped her in the shop. She had been shocked when she discovered the deficit which was considerable. She had made contact through the help line. She did not have any phone records of her help line call. She was careful with her procedures after her first discovery, double checking for any errors. She found none but the deficit increased to over £10,000. She accepted that she was putting in the incorrect numbers in her weekly reports. She had not demanded help as she thought it would turn out to be a simple matter. She accepted that the deficit was growing as she made the false returns. Despite having time to think, she was unable to come up with an explanation. She was not helping herself to money.

She would have expected an error notice to be generated if she was inputting wrong information. She denied the suggestion that there was no wrong input merely her taking money. She had thought and told Mrs McKay that she thought the error was in the Girobank. There were a higher level of transactions there over the Xmas period which might explain the increase in the deficit. There had been no problem with her work when she was at the Eilon office although her work had been different.

She had not had steady employment before going to the Eilon office. She had been doing some shop work. She had studied Psychology at College for three years, but not to degree level. She had not

found working for the Post Office difficult but it could be stressful. The office was busy for one person. She said she had no explanation for the losses. It was suggested that she had started taking small amounts and it had then multiplied but she denied she had taken anything.

On re examination, she confirmed that she was still in debt, now some £18/20,000 which included the Stuartfield debt. She had sold her car in January 2003 for £700 which she had paid towards her debts. She had not bought another car. She had been out of work for a time. The contents of her letter to the relief postmaster had not been entirely true but she knew it was her responsibility and did not want the relief to worry.

There was no further evidence.

In the Crown's submission there was no dispute that the money was missing and had gone so while she was the Postmaster. The accused was an articulate and educated person who did not seem to have any difficulties with the processes. It was her evidence that she trusted the part time staff and did not believe that they were responsible. No error notices had been generated by the postal authorities. She had been unable to explain the basis of the mistakes. The minor cash errors could not explain the total. It was important to note her cover up but submitting knowingly false returns and that she had not told Mrs McKay the truth about the source of the deficit. She would not have made a mistake when processing cash, it was not intellectually challenging. Why would she continually repeat the mistake if indeed it was a mistake in the first place.

It was suspicious that she had not reported the issue and had actively sought to cover it up. Her poor financial position, her low wage and somewhat erratic explanation of that financial position gave her a clear motive to embezzle funds. Taking all the facts together there was an inevitable inference that she was guilty. The Crown would accept a reduction of £4,000 from figure in the charge.

In submission the defence asked that she be granted the benefit of the doubt. She did not seek to blame anyone else, she had not denied the lack of error notices she had not disputed that it had taken her a long period to draw attention to the problems. There could be simple errors as Mrs

McKay had highlighted. Pressing the wrong button could result in a significant error turning £100 to £1000. She had given evidence of small pay out errors but accepted this could not amount to a total of £10,000. She accepted that she had covered up evidence and altered returns to make them correspond and that she had misled the relief Postmaster. Being articulate did not prevent her from making mistakes.

The Post Office had all the records and should have been able to trace the reason for the discrepancy. There had been no such evidence nor of she actually taking money. She had cooperated. Her explanation was that there had been a considerable series of errors. The Crown had not proved it's case beyond reasonable doubt. She did not commit the offence and should be believed.

In convicting the accused I accepted that there was no direct evidence of her having taken the monies but that a clear inference of embezzlement could be drawn from the evidence led. The main factors were,

Length of time from when the accused admitted she knew of the discrepancy until it was found by others.

Her repeated falsification of cash records, weekly for at least 8 months.

Her misrepresentation of the facts to the relief Postmaster.

Her explanation amounted to little more than a denial.

She gave no coherent explanation for the repeated errors and her failure to report these errors.

Her own weak financial position and failure to adequately explain her finances.

There was no doubt that she was responsible for the missing cash.

It seems that by this stage it had been accepted that the figure was £6749.58 which I assume was the figure contained in the conviction.

After hearing the defence mitigation I adjourned the case for Reports. In view of her good previous record and a favourable report and notwithstanding the substantial amount and breach of trust involved I considered that a Community Service Order, for 180 hours, was appropriate.

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IN ABSENCE OF FULL INFORMATION I AM NOT IN A POSITION TO MAKE FINDINGS IN FACT OR
LAW.

I should perhaps comment that simply because a number of Postmaster convictions have been found unsafe due to recent information regarding the Horizon software system it does not follow that all such cases fall into the same category.

In this case there was a high level of sustained, regular and deliberate misreporting with only vague, unconvincing and inadequate explanations therefor. This is not persuasive of the presence of an innocent explanation.

GRO

Sheriff (retired) Malcolm Garden.

7 March 2021