

enquiries. Having done so, he returned to Trifles and called the police. That, he said, was about 7 a.m. Detective Constable Scott and Miss Britten arrived at the premises soon after that. Both gave evidence in this trial. Trifles opened to the public at it usual hour of 10:00 a.m.

From the evidence of Mr. Whittaker the following picture of relevant aspects of the interior of Trifles' premises emerged. It is divided into two sections - a L shaped public section and a kitchen section at the rear, measuring approximately 10' X 12'. A telephone is located on a desk adjacent to the rear door. The microwave is on the far wall away from the desk and telephone, and the freezer is beneath the microwave.

Alma Smith (the former Alma Britten) gave evidence of her dealings with the defendant on the evening of 25th February. She said that he asked if he could use the telephone and she allowed him to go to the rear part of the premises to do so. She did not accompany him and could not see or hear what he did there. When he came back through the front he said a lady had answered his call.

Mrs. Smith acknowledged that she did not check the back door before leaving the premises. She said she had seen another employee, Cheryl Myles, lock it when she used it to leave work soon after 6 p.m. With regard to the missing money she said that she was positive that she had placed it in the microwave in a brown paper bag before leaving.

Although she no longer works at Trifles, I found that Mrs. Smith's evidence was defensive about not having checked the back door before leaving, and a little too glibly delivered. Moreover, her evidence of seeing Cheryl Myles go out of the back door soon after 6 p.m. was contradicted by Cheryl Myles herself who said that she left through the front door and did not use the back door after 3 p.m. I prefer her evidence.

Mrs. Smith was inviting the inference that the defendant had unlocked the back door while he was making his telephone call. That is a possible inference, but not the only one. I conclude that, for whatever reason, the back door was left open when Miss Britten left on the night of 25th February. There was evidence from D/C Scott that there was no sign of forcible entry. Mrs. Dixon, the Assistant Manager of the Security Firm by whom the accused was employed, acknowledged that if a security guard found a door unlocked he would be entitled to enter the premises to check them - indeed it would be his duty to do so. I find that an essential element of the offence of burglary - entry as a trespasser - has not been proved to the requisite standard, and I acquit him of that offence as charged in count 1 of the indictment.

Count 2 is a charge of theft. It is not in dispute that the defendant took the money to which this charge refers from within Trifles, threw away the bag in which it was and took it home when he finished work. In spite of my reservations about the demeanour of Mrs. Smith, I prefer her evidence that she left the money in the microwave rather than that of the accused who said that he found it on the table in the rear section of the premise. Even if I am wrong in that regard, the evidence of what took place after he had appropriated the bag of cash is, in my judgment probative beyond reasonable doubt of that appropriation being dishonest, and done with the intent of permanently depriving the person to whom it belonged of it. I pay particular regard to the following. Having taken statements from Mr. Whittaker and Miss Britten D/C Scott and two other officers went to the accused's house in Lower Valley. According to D/C Scott, he informed the accused that he was investigating a burglary at Trifles and some money was missing. The accused said he didn't know what he was talking about. A search was carried out but the missing money was not found. The material aspects of that evidence were confirmed by one of the other officers, D/C Walton. The accused's version of this encounter was somewhat different. He said that the police did not tell him directly at first what they were investigating. They did however ask to search the house and then said they had a report from Trifles that

some money was missing. They asked to search the clothes the accused was wearing at work the previous night. They found about \$52 in the pockets and when the accused was asked if that was all he had he said "yes". His explanation for not acknowledging that he had the missing money at home was that he was trying to "distance" the police so that he could see if he could get back to Miss. Britten and return the money to her. His motive was to protect her and he never intended to keep the money for himself.

The accused was transported to George Town Central Police Station and arrested on suspicion of burglary. At first he denied knowing anything but later acknowledged taking the money. He returned it after being taken back home by the police. After his return to the police station he made a caution statement and answered questions under caution.

Records of both are in evidence. The statement includes the following -

"At about 10:30 o'clock p.m. I went and made a complete check of the compound. I noticed that the back door of the ice cream parlour was left open. I pushed it and looked inside. I saw a lot of things including the brown paper bag which I looked into and saw that it was money. I then took it up and keep it in my possession. I also found that the restaurant La Fontaine door was open. At eleven o'clock I handed over duty. I had closed the doors. I handed over duty to security officer Williams and went home. About 9 o'clock this morning I left home and came back in town to see if I see the young lady to tell her what happen. She wasn't there, so I did not say anything to any one else. I intended to take back the money to her personally the evening when I was going back on work at 5 o'clock."

That is the defence he has maintained ever since. I am satisfied beyond reasonable doubt that it is false. I do not believe that the accused came to George Town on the morning of the 26th February to seek to return the money quickly to Miss Britten, and he could not possibly have believed that he could have succeeded in that after returning to work at 5 p.m., having held on to the money for the whole day. Such a belief after he knew the police were investigating would be even more incredible. He gives the same explanation for not telling the guard who relieved him at

11 p.m. on the 25th February, or his superior at the security firm, anything about having taken money although he says he came into town on the following morning, and could have told his superior then. The story is an obvious fabrication.

I find the accused guilty on the second count in the indictment namely theft.



G.E. Harre
Judge

12th November, 1992