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ROYAL COURT
(Samedi Division)

164.

21st August, 1995

Before: The Deputy Bailiff, and
Jurats Le Ruez and Potter

Police Court Appeal
(The Relief Magistrate, T.A. Dorey, Esq)

Christopher Peter Drury

- v -

The Attorney General

Appeal against conviction in the Magistrate's Court on 26th May,
1995, following a not guilty plea to:

1 count of larceny.

Appeal allowed; conviction quashed.

Advocate A.D. Robinson on behalf of the Attorney General.
Advocate R.J. Renouf for the Appellant.

JUDGMENT

THE DEPUTY BAILIFF: Christopher Peter Drury was charged and found guilty of stealing two sets of door handles and a door lock valued at £27.31 from Norman Limited on 9th November, 1994. Judge Dorey found him guilty. Drury's defence was absent-minded taking.

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In his summing up Judge Dorey said this:

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"He left the store and I quote "forgetting completely about the door handles and lock until the store detective approached". Because of the weight of the bag that he was now carrying with the heavy locksmith items Police Constable Berry found this difficult to believe and so

5 does the Court. There is also the fact that Mr. Drury had, on his own admission, dealt in Normans on many occasions over a number of years. It was not a case of a person getting confused in a strange supermarket. The Court is satisfied beyond reasonable doubt that Mr. Drury is guilty as charged".

10 It is of course a clear case of dishonesty if Drury's conduct was dishonest, but his defence was that there none of the elements of the mens rea of theft. There is always a temptation in cases of shoplifting to look at the matter with scepticism.

15 We have to say that while that course must be resisted we believe that the Magistrate dealt in his summing up very fairly with a difficult situation.

20 There is, however, one major problem. Mr. Saunter, who is a store detective and a former policeman, apparently made a contemporaneous statement. This was lost in circumstances which are not entirely clear. It has still not been found.

25 Mr. Drury appeared on 9th March and pleaded not guilty. On 16th March, Mr. Saunter made a second statement. This was made on an official States of Jersey police witness statement form. As we have said, Mr. Saunter is a former police officer but whether that entitles him to make a statement in this way is, perhaps, doubtful.

30 The statement was made four months after the event and Mr. Saunter had clearly in the interim worked professionally in a very large number of stores and had visited Singapore on holiday.

35 There is of course no general rule of law that witnesses may not see the statements that they have made, but these statements should have been made reasonably close to the time of the event.

In the circumstances on that ground alone, in our view, the verdict given is unsafe and unsatisfactory and the appeal is upheld. Mr. Renouf, you will have your legal aid costs.

No Authorities.