

The Commissioner of Police v Joan Smith

The Prosecution Case

Joan Smith (the accused) is a 78-year woman who is charged with theft (shoplifting) and Basic Assault (kicking a store security officer).

It is alleged by the prosecution that a store security officer (SSO) Mr Ice, that on the day of her apprehension the accused attended a Big W store carrying a large shopping bag.

After collecting a supermarket trolley from the front of the store the accused placed the shopping bag inside the trolley and then proceeded to walk down several aisles placing food and other items into the trolley. On several occasions the accused stopped and looked around in a way that aroused the suspicion of the SSO who started following the accused from a distance.

In aisle 4 the accused began picking up items, examining them and putting them back. She appeared agitated and seemed to be muttering to herself, which also drew the attention of other customers in the vicinity. The SSO observed several customers to be looking in the direction the accused as they passed by.

Eventually, the SSO saw the accused select a packet of batteries from a shelf which she held in her hand for a few seconds. At this point the accused had her back to the SSO and was approximately 15 meters away. The SSO then observed the accused lean into the trolley appearing to place the batteries inside the shopping bag. The accused continued shopping but periodically stopped and looked around in a furtive manner which further heightened the SSO's suspicion that the accused might leave the store without paying for some items.

At the check out the accused paid for all items in her trolley but did not produce the batteries for payment. The accused assisted the check out operator to place her purchased shopping into her shopping bag and then left the store. The accused told the operator not to worry about a receipt because she trusted her.

The SSO confronted the accused as she was crossing the supermarket car park. The SSO informed the accused that she had left the store without paying for certain items and asked to look in her shopping bag. The accused said she had paid for everything and began crying. The SSO took hold of the accused's bag and began rummaging through it, accidentally breaking an egg which spilled onto the shopping. The SSO produced the batteries and said, "you didn't pay for this". The accused became highly distressed repeatedly stating "I did pay for the batteries", and "you have ruined my

shopping". The accused is then alleged to have kicked the SSO in the lower left leg, which later came out in a bruise.

The SSO asked the accused to accompany him to the store security office to await the arrival of the police. The accused complied under protest, allegedly stating to the SSO that she was going to report him for elder abuse. While waiting for the police the accused allegedly told the SSO that this was the first time she had ever taken something from a supermarket without paying

About 15 minutes later a probationary female police officer arrived and interviewed the accused under caution. She made handwritten notes of the conversation, putting the SSO's observations to the accused. The notes of conversation were in dot point form with a note indicating that the accused was very upset and appeared to be rambling at times. The accused stated on several occasions that her husband had died last year and she was often very sad and lonely these days. She stated that it was very hard to make ends meet on the pension and she didn't mean to do it. She further stated she was sorry this had happened and nothing like this had ever happened before.

With respect to the assault allegation the accused stated that the SSO shouted at her and was very nasty. She stated the SSO just confronted her and tried to snatch her bag. She didn't know it was a store detective at first because he just shouted at her to begin with and didn't show her any ID until he took her to the interview room. She said she might have stepped on his foot during the tussle over the bag. When given the opportunity, the police allege the accused declined to sign the police officer's notes of interview.

Instructions and the Defence Case

Ms Smith instructs you that she strongly disputes the allegations of theft and assault. She says that she forgot to pay for the batteries because her mind was elsewhere and she simply forgot they were at the bottom of the shopping bag when she went through the check out. She says she probably put them in her shopping bag to keep them separate from the food items in her trolley. She says she purchased some laundry detergent and household cleaning items which she also put in her shopping bag to keep them separate from the food items. Ms Smith says that she usually takes two or three shopping bags with her to the supermarket but forgot to bring them all this day.

Ms Smith does not believe she was agitated or behaving furtively while doing her shopping. She says she was probably looking around a lot because its not always easy to find what your looking for on supermarket shelves.

Ms Smith strongly denies she made any physical contact with the SSO. She instructs that the SSO grabbed her by the shoulder as she was leaving the store and said she was a thief. He snatched her bag which she tried to grab back. Ms Smith instructs that he roughly went through the contents of her bag smashing several eggs. He then produced the batteries and said, “see you did steal them, you’re in big trouble”.

Ms Smith says she began crying because the SSO was aggressive and intimidating. She says she was very scared and thought he might get rough with her unless she went with him to the interview room.

Ms Smith denies telling the SSO that she would report him for elder abuse. And she completely denies saying to the SSO she had “never done anything like this before”, and that she was “sorry”.

She agrees she might have mentioned the SSO that she was a pensioner but never said “it’s hard to make ends meet” and she “didn’t mean to do it”. Ms Smith instructs these statements are a fabrication.

Ms Smith instructs that she cannot recall all the conversation she had with the police officer because she was upset and crying. However, she recalls telling the police officer that her husband had died last year and that this had had a big impact on her. Ms Smith thinks the police officer was writing things down as they spoke but is sure she was never asked to sign anything. Ms Smith is also confident that she repeatedly told the police officer that it was just a mistake, she forgot to pay and that she just wanted to go home. She instructs that the police officer told her that she can understand it’s hard to live on the pension. Ms Smith denied stating to the police officer that she might have stepped on the SSO foot.

Agreed Facts between Prosecution and Defence

Assume that Ms Smith maintains her innocence and the matter is listed for trial in the Magistrates Court with the following facts being agreed between the parties:

1. The CCTV footage from the supermarket appears to accurately depict some of the actions of the accused described by the store security officer, but the quality of the vision is poor and is obstructed to some degree by other customers blocking the view of the accused when she handles the batteries in aisle 4.
2. The CCTV footage from the supermarket car park on the day in question was accidentally destroyed during the retrieval process.
3. The supermarket transaction receipt is produced, and it is not disputed that the batteries the subject of the charge do not appear as a purchased item.
4. The store security officer made no notes of his conversations with the accused and the incident report he prepared for the store manager makes no mention of

the accused kicking him. This is mentioned for the first time in his statement to the police taken several weeks after the incident.

Preliminary Rulings by the Trial Magistrate

At the commencement of the trial defence counsel has sought a voir dire hearing seeking the exclusion of the evidence of the police record of interview with the accused, and the conversations with the accused asserted by the store security officer. The Magistrate has noted the objection but has ruled the evidence will be admitted *de bene esse*, making a final ruling as to admissibility after hearing all the evidence to be adduced at trial.

Prior to trial defence has disclosed a medical report to prosecution from the accused's GP, Dr Feelgood. The report states that the accused suffers from high blood pressure and diabetes. And since the death of her husband 5 years ago, she has suffered from depression and anxiety. The report concludes by expressing the opinion that the accused often becomes confused when stressed and that she has a poor memory which may be a sign of the early onset of dementia.

The prosecution has indicated to the Court that it will object to the evidence of Dr Feelgood should he be called to give evidence for the defence.

The Magistrate has indicated that he will consider the prosecution objection to this evidence at the appropriate time.

Case Theory and Cross Examination

Develop a case theory for both defence and prosecution. Consider the strengths and weaknesses of each parties case. What are the facts in issue in relation to the offences charged and with respect to the issues of admissibility of evidence?

Sketch a cross examination for each of the witnesses to be called at trial. Assume that each of the witnesses has come up to proof in examination in chief based on the scenario presented above.