Fraudulent conversion.

[2020]JCA097

COURT OF APPEAL

1 June 2020

Before : Mr J Crow, Q.C., (President),
Mr D. Perry, Q.C., and
Sir William Bailhache, Commissioner.

Between	**HM Attorney General**	**Appellant**
And	**GH**	**Respondent**

Crown Advocate S. C.Thomas for the Appellant.

Advocate I. C. Jones for the Respondent.

JUDGMENT

THE PRESIDENT:

Introduction

1. This is the judgment of the court.

2. By Notice dated the 4th November, 2019, the Attorney General has referred three questions to this court pursuant to Article 45 of the Court of Appeal (Jersey) Law, 1961:

> ***"(a) In order for there to be 'entrustment for a specific purpose' in the context of an allegation of fraudulent conversion, does there have to be evidence from the owner of property that he/she entrusted that property to the accused for a specific purpose, or is the jury entitled to infer that the accused was so entrusted, having considered all the circumstances of the case?***
>
> ***(b) Where a transaction is prima facie styled as a contract for sale, is a jury prohibited from considering all the circumstances of***

that transaction and concluding that there was entrustment for a purpose so as to render an accused guilty of fraudulent conversion?

(c) Was the Deputy Bailiff, as he then was, correct to find as a matter of law that entrustment could not or did not arise on the evidence presented by the Crown in the case of GH?"

3. These questions arise out of a trial in which the accused had been charged with nine counts of fraudulent conversion. For the purpose of answering the legal issues raised by this Reference, it is sufficient to record that each charge was in materially identical terms. The accused was charged with having –

> ***"criminally and fraudulently converted to her own use and benefit £[specified amount] that sum being monies paid to [a named trading company] by [the alleged victim] for the purpose of purchasing and shipping [specified goods] on his behalf by expending that sum on costs and expenses incurred in debts owed by the said [accused and named company]."***

4. At the close of the prosecution's case, the defence submitted that there was no case to answer. Having heard legal argument, the Deputy Bailiff (as he then was) accepted that submission, giving a brief *ex tempore* ruling which was later explained with more detailed reasoning a few days later ("**the Ruling**"). He directed the jury to enter 'not guilty' verdicts, and the accused was accordingly acquitted.

5. Under Article 45(4) of the Court of Appeal (Jersey) Law, 1961, a reference "*shall not affect the trial in relation to which the reference was made or any acquittal in that trial"*. Nevertheless, the acquitted person was represented in this court by Advocate Jones. The main thrust of his argument was that the Ruling was an entirely reasonable finding of fact and that it raises no points of law capable of supporting a reference under Article 45. In short, he submitted that the questions raised by the Attorney General were not in truth questions on *"a point of law which has arisen in the case"* (within the wording of Article 45(1)), but rather an illegitimate attempt *"to challenge the factual finding that there was no case to answer".* [i]

6. The legal context in which the Attorney-General's questions fall to be considered is well established. As explained in Marriott v. Attorney General [1987-88] JLR 285, the offence of fraudulent conversion has been absorbed into this jurisdiction by the adoption into customary law

of the substantive elements of what in England & Wales was a statutory offence under s. 20 of the Larceny Act 1916:

> *"(1) Every person who –*
>
> *…*
>
> *(iv) (a) being entrusted either solely or jointly with any other person with any property in order that he may retain in safe custody or apply, pay, or deliver for any purpose or to any person the property or any part thereof or any proceeds thereof; or*
>
> *(b) having either solely or jointly with any other person received any property for or on account of any other person;*
>
> *fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof, or any proceeds thereof;*
>
> *shall be guilty of a misdemeanour".*

The prosecution's case on the facts

7. The prosecution's case at trial can be shortly stated. The accused's business, which was conducted through two corporate vehicles, was the purchase and sale of used clothing, shoes and handbags in bulk. She solicited orders through her website, largely from customers overseas, many of whom were in Africa. Her business model was not to carry surplus stock to meet anticipated orders, but rather to require either a deposit or payment in full from her customers (and occasionally also shipping costs) when they placed their orders, and only to purchase the necessary stock herself to meet any such orders once they had been placed and the necessary deposit or purchase price had been paid. In the event, significant sums of money were paid by customers who never received the goods they had ordered. Instead, the money they paid was applied in a number of different ways, including the reduction of the companies' overdrawn bank accounts, the discharge of its overheads and the payment of personal expenditure for the benefit of the accused.

8. The Attorney-General's case is that there was evidence that could, and therefore should, have been put to the jury capable of supporting the conclusion that, at the time she received the

several deposit or purchase payments from the customers named in the indictment, the accused did not have sufficient stock to meet their orders. The evidence is said to comprise:

(a) admissions made by the accused;

(b) evidence from some of her employees;

(c) evidence of communications between the accused and her employees;

(d) evidence from the complainants, other customers and individuals associated with them;

(e) the wording of the invoices rendered to those complainants and other customers;

(f) the terms and conditions of business of the accused's trading companies;

(g) evidence of communications between the accused and some of her customers;

(h) evidence from a forensic accountant who had examined the books and records of the accused's trading companies;

(i) evidence of communications between the companies and their bankers;

(j) the agreed facts and an agreed chronology.

9. We have itemized the various sources of evidence in summary form both because this is a Reference concerned only with points of law, and also because, for the purpose of this Reference, we are prepared to accept that there clearly was evidence capable of supporting the conclusion that the accused's business did not have sufficient stock to meet each order either when it was placed by each customer, or when each customer paid the necessary deposit or purchase price. For these reasons, it is unnecessary to describe the content of the available evidence in any greater detail.

The ruling in the Royal Court

10. In accepting the submission that there was no case to answer, the Deputy Bailiff referred to the constituent elements of the offence of fraudulent conversion, as derived from Marriott, and emphasized (at para. 26 of his Ruling) that "*what is required is that the Defendant has been 'entrusted'"*. He held that this must mean something *"above and beyond simply receiving money in the ordinary course of business of sale and purchase"* and requires that *"the money is held for a particular purpose"*. He rejected the proposition that the money must necessarily be held *"pursuant to a trustee type or fiduciary relationship"* but nevertheless he held that there must be *"a purpose which is beyond the simple business use of the recipient company".* In short, the recipient "must be obliged to use it in a particular way" (emphasis added). Relying on the citation of R v. Laurens (1916) 11 Cr App R 215 in Archbold (36th ed.), at para. 1916, he held (at para. 27 of his Ruling) that *"being the recipient of money in the ordinary course of business in return for which goods [are] to be provided"* does not involve any entrustment. He decided (in para. 29 of his Ruling) that the present case involved *"a simple sale and purchase"* and on that basis he concluded that *"There was no evidence before the jury that the monies paid to [the accused's companies] had been paid to be used in a specific way".* For those reasons, he accepted the submission of no case to answer (in para. 30 of his Ruling) and directed the jury to return '*not guilty'* verdicts.

The issues, arguments & answers

Introduction

11. The Attorney General invites this court to answer the three questions listed in para. 2 above as follows:

    (a) The question whether there has been entrustment is one of fact for the jury. A jury's decision must be taken by reference to all the circumstances of the case, and as such there does not always need to be direct evidence from the relevant property-owner that she/he entrusted the property to the accused before a jury can properly infer that that is what happened.

    (b) Even though a transaction is styled as a contract for sale, a jury is entitled to consider all the evidence it has heard and conclude that the accused was, in all the circumstances, entrusted with property for a specific purpose.

(c) A jury, properly directed, could have concluded that there was entrustment for a specific purpose in this case because the jury would have been entitled to conclude that –

(i) when funds were transferred to the accused by the customers named in the indictment, *"she did not have a ready and available stock of goods from which the particular order could be fulfilled",*[ii] *and*

(ii) the state of the accused's finances was such that, if money transferred to her was not used to obtain goods, *"then there was no prospect of the goods being obtained";*[iii]

(iii) even if the transactions were properly characterized as contracts for sale, nevertheless the accused *"became entrusted with each complainant's property".*[iv]

12. Before considering the parties' competing arguments on the specific questions raised in the Reference, it is important at the outset to make three related observations about the constituent elements of the offence of fraudulent conversion, because these help to frame the discussion that follows:

(a) First, it is illogical to talk of someone 'converting' property if the property belongs to him beneficially and unconditionally. Conversion can only occur where a person deals with property inconsistently with the property rights or interests of another person.

(b) Secondly, the question whether any given property does, or does not, belong beneficially and unconditionally to the accused is not a pure question of fact: it involves a legal analysis of the evidential material.

(c) Thirdly, the word 'entrusted' must be understood by reference to the context in which it is used – namely, to describe circumstances where property belonging beneficially to another person comes into the custody or control of the accused for any of the specified purposes.

13. That is not to say that entrustment can, for these purposes, only arise where a person acts formally as a trustee (even though the words 'entrustment' and 'trust' are plainly cognate terms). On the contrary, there will be many other situations, such as bailment, where the concept may

apply. It is also important to recall that, although entrustment is a necessary element under s. 20(1)(iv)(a), under the provisions of s. 20(1)(iv)(b) fraudulent conversion can also be committed in relation to money which is held *"for or on account of any other person"* without having to establish any entrustment, let alone any formal relationship of trustee and beneficiary. Nevertheless, this Reference is concerned with s. 20(1)(iv)(a), and in our judgment it is clear that the concept of fraudulent conversion based on an alleged entrustment is inapt to describe a situation where a person deals with property which belongs to him beneficially and unconditionally.

14. In considering the viability of any charge of fraudulent conversion of property which has allegedly been entrusted to the accused, the court must accordingly focus not only on the concept of entrustment, but also on the relevant property. In the present case, the relevant property identified in the Statements of Offence was the money in each trading company's account, which was derived from the various deposit and purchase payments made by the accused's customers. That is what the accused was charged with having converted.

15. In this context, it is helpful to consider the decision in R v. Preddy (John Crawford) [1996] AC 815. That case was concerned with mortgage frauds, in which transfers had been made through the ordinary banking system from an account in the name of a mortgage lender to an account in the name of the fraudulent borrower. The legal issue in that case was whether the defendants had committed the offence of obtaining property by deception under s. 16 of the English Theft Act 1968. That, as the Deputy Bailiff rightly pointed out, was not the issue in this case. Nevertheless, the decision contains some important legal analysis which helps to answer the questions in this Reference. In the course of giving the leading speech, Lord Goff analysed whether as a matter of law the mortgage lender's own 'property' was actually acquired by the fraudulent borrower when each banking transfer was made. His conclusion was that it was not: *ibid* at 833C – 834G. His legal analysis was that the mortgage lender's property consisted of *a chose in action* against the paying bank, because the ordinary relationship of banker and customer is based simply on debt. As such, when a 'transfer' was made from the mortgage lender's account to the fraudulent borrower's account, the fraudulent borrower did not thereby acquire the mortgage lender's property, because he did not acquire ownership of the mortgage lender's *chose in action* against the paying bank. Instead, he acquired different property, namely a *chose in action* of equivalent value against the recipient bank.

16. In our judgment, this analysis is both correct and illuminating for the purposes of this Reference in two respects:

    (a) First, it demonstrates that, when one of the accused's customers 'transferred' money to either of her companies' accounts, neither the accused nor her company thereby

obtained any property belonging beneficially to the customer. Instead, like the fraudulent borrower in Preddy, she (or her trading company) obtained a pecuniary benefit of equivalent value, namely a chose in action against the recipient bank where her trading company held its account, or (if the account was overdrawn) a diminution in the company's indebtedness to the receiving bank.

(b) Second, it underlines the fact that this conclusion is founded on a legal analysis of the evidence surrounding the transaction. It is not a pure question of fact.

17. Turning to the circumstances of this case, it then becomes necessary to consider how the prosecution put its legal case on entrustment. The short answer is that it did not develop a coherent case theory on the law. Rather, its submission before the Deputy Bailiff, as it was in this court, was that the issue of entrustment is simply a question of fact for the jury. As it happens, Advocate Jones for the Respondent supported that approach in this court, because his main purpose before us was to demonstrate that the Reference raised no point of law but was, rather, an illegitimate attempt to overturn the Deputy Bailiff's findings of fact. His argument in the court below had been a legal one based on Preddy but, since the relevance of that case had been dismissed by the Deputy Bailiff, he understandably shifted his ground in this court and sought instead to uphold the Ruling on its own terms.

18. In our judgment, for the reasons outlined above, the question whether there has been any entrustment is not a pure question of fact. Necessarily inherent in the debate is a separate question whether there is any relevant property which was capable of being entrusted, and hence capable of being converted. The answer to that question turns on the legal and beneficial ownership of the property in question, and the legal effect of the terms on which it was transferred (if it was) from the putative victim to the accused. If the correct legal analysis is that the property which is said to have been entrusted and converted belonged legally and beneficially and unconditionally to the accused, then a charge of fraudulent conversion cannot be sustained. There would, in that situation, be no evidence that could properly be left to the jury, not so much because of any shortcoming in the evidential material as such, but because the legal analysis of the available evidential material could not sustain a conviction. In short, there would be no case to answer.

19. For these reasons, the Ruling in this case was not a pure finding of fact. It is clear from the passages quoted in para. 10 above that the Deputy Bailiff was making findings of law as to the nature and legal effect of the transactions between the accused, her trading companies and her customers, based on the material adduced by the prosecution. He held (rightly, in our judgment) that money paid by a purchaser to a vendor under an ordinary contract for sale of goods becomes

(in law) the property of the vendor. He held (again, rightly, in our judgment) that the prosecution had failed to adduce any evidence capable of leading to a different conclusion (of law) on the facts of this case. As a result, he held (rightly, in our judgment) that there was no case to answer.

20. The Attorney-General's argument, both at trial and in this court, was that the Deputy Bailiff ought to have left to the jury the question whether there had been an entrustment. In support of that argument, he drew attention to the material outlined in para. 8 above, and he submitted that a jury, properly directed, could have reached the conclusions outlined in para. 11(c) above. In our judgment, these submissions do not assist the Attorney-General, for two related reasons.

21. First, although it is entirely true to say that the material on which the Attorney General sought to rely was evidential in nature, it is nevertheless unavoidable that the conclusions he must necessarily invite the court to draw were, properly understood, legal. In particular, he conceded (rightly, in our judgment) that ***"****Money advanced under a simple contract of sale is not capable of being 'entrusted"*.[v] That is not a statement of fact: rather, it is a conclusion of law, based on the legal proposition that (absent any special contractual terms) the legal and beneficial ownership of money received under a simple contract for the sale of goods passes on payment to the vendor. Furthermore, the Attorney-General's submission that there was material in this case capable of leading a jury, properly directed, to reach a different conclusion was similarly based on an implicit recognition that he was contending for a legal conclusion as to the effect of the contracts in this case. Citing the judgment in Laurens at 216 – 217, he said that the transactions in this case were different from ordinary contracts for the sale and purchase of goods, and were instead to be aligned with other situations where the property to be acquired by a purchaser *"had to be brought into being and the money was paid over to the defendant in order for this to happen"*. [vi] Implicit in this argument was a recognition of the fact that the Attorney General was offering a legal submission as to the legal effect of the transactions in this case.

22. In any event, the Attorney-General's argument in this regard cannot be sustained even on its own terms. There was no evidence in this case capable of leading to the conclusion that the legal effect of the transactions was any different from that of any ordinary contract for the sale of goods. In particular, and contrary to the Attorney-General's argument, the contracts did not require any property that did not previously exist to be *"brought into being"*. The second-hand goods existed out there in the market: it was just that the accused and her trading companies did not yet own them when they accepted orders from their customers. Nor were these contracts for the sale and purchase of specific items (in the sense that a contract for the sale and purchase of an original art work is a contract for a specific item). Rather, they were contracts for the purchase and sale of generic goods, described by category. As the invoices make clear, the orders were for general classes of goods by weight*: "Winter Mix … Bed Sheets and Covers … Caps … Girls Dresses … House Hold Rummage [sic] … Men Jeans Pants [sic]"*. [vii]

23. The fact that the accused did not hold the necessary stock to complete each order at the time when the order was accepted and the deposit or purchase money was paid is irrelevant to the question of entrustment, [viii]because it does not alter the legal effect of the transaction or the legal ownership of the money standing in the trading companies' accounts. That money was the trading companies' money, and the accused was legally entitled to apply it for the trading companies' own business purposes, whether that be in payment of staff salaries, taxes, fixed overheads, the purchase of stock for any customer's order, or otherwise. There was no evidence that the accused was contractually obliged to segregate each customer's payment immediately on receipt, and then to dedicate that sum solely towards the purchase of stock to satisfy that customer's order. There was no evidence that the accused or her trading companies held the deposit or purchase monies on trust. There was, in short, no evidence capable of being put before a jury to support a case on entrustment.

24. The Attorney General suggested that a jury, properly directed, could have reached the conclusion that there was entrustment because the state of the accused's finances was such that, if money transferred to her was not used to obtain the goods*, "then there was no prospect of the goods being obtained"*. [ix] In our judgment, that is a *non sequitur*. If proven, it would have been relevant to the question of honesty (or it might have supported a charge of fraud), but it is irrelevant to the question whether there was an entrustment.

25. Applying the legal analysis outlined above to the circumstances of this case, we therefore consider that the Deputy Bailiff was entirely correct in accepting the submission of no case to answer. There was no evidence on which a jury, properly directed, could have concluded that the accused was entrusted with any relevant property within the meaning of the offence of fraudulent conversion because (as analysed in Preddy) the transfer of funds from a customer's account to the vendor company's account did not involve the transfer of the customer's property into the custody or control of the accused (or of her trading companies), and the prosecution led no evidence to suggest that the money was held on trust for the accused's customers, or that it was paid otherwise than under a normal contract for the sale of goods.

26. With those observations in mind, it is now possible to address each of the three questions posed in the Reference.

The first question

27. The initial step, in relation to each question set out in the Reference, is to determine whether it is a (i) a *"point of law"* (ii) *"which has arisen"* in this case, within the meaning of Article 45(1). In our judgment, the first question is on its face a point of law. The Attorney General is asking whether,

in all cases of fraudulent conversion, it is a precondition to conviction that there should be direct evidence of entrustment from the putative owner of the property which was allegedly converted.

28. Nevertheless, it is not obvious that this question necessarily arises from the Deputy Bailiff's Ruling. His overarching conclusion was that there was simply no evidence of entrustment. [x] His Ruling was not predicated on the basis that there must in all cases be direct evidence from the putative victim. The most that can be said is this: whilst agreeing, in his *ex tempore* observations, that a jury might well suppose that the customers' payments in this case *"should in a moral sense have been used to buy goods*" he then added "*but there is no evidence given by any of them that it was subject to that purpose expressly"* (emphasis added). That remark was made in the context of his overarching finding, which was that there was no evidence to go to the jury at all. The absence of evidence from the complainants was merely one illustration of that general absence. We do not read his Ruling as indicating that direct evidence from a complainant is in all cases a precondition to conviction.

29. Nevertheless, in the interests of clarity, we will answer the Attorney-General's first question as posed. In our judgment, the answer is that, in order for there to be an 'entrustment for a specific purpose' in the context of an allegation of fraudulent conversion, there does not necessarily have to be any direct evidence from the owner of the property that s/he entrusted his/her property to the accused for a specific purpose: rather, the jury is entitled to infer such entrustment from all the circumstances of the case.

30. Although that answer can be given shortly and with certainty, nevertheless in the context of the present Reference it is not a useful answer, unless due attention is given to the assumption on which the question is based. Inherent in the Attorney-General's first question as posed is (rightly) a recognition that fraudulent conversion can only be committed where the accused is entrusted with property which belongs beneficially to *"the owner of [that] property"* (our emphasis). As noted above, the question whether the relevant property does, or does not, belong beneficially to the putative victim is not a question of pure fact: rather, it is a conclusion of law, based on the facts.

31. In the course of his argument under this heading, the Attorney General relied on Marriott (supra), R v. Grubb [1915] 2 KB 683, R v. Smith [1924] 2 KB 194, R v. Sheaf (1927) 19 Cr App R 46, and R v. Pilkington (1958) 42 Cr App R 62. Without lengthening this judgment unnecessarily, it may be convenient to explain briefly how each of these authorities fits into the analysis:

    (a) Marriott was in essence the obverse of this case. There, the defendant had been appointed as curator of his mother's estate. The legal effect of that appointment was

that he had legal control over the estate, but beneficial ownership of the property constituting the estate had not been transferred to him. As a result, the correct analysis was that the relevant property had been 'entrusted' to him, and it was legally capable of being converted by him.

(b) The legal issue in Grubb was whether property which had admittedly and intentionally been entrusted to a company could, as a matter of law, be fraudulently converted by someone else, namely a director of that company. [xi]The answer was 'yes'. [xii]The court's reasoning supports the analysis outlined above, because it proceeds on the basis that fraudulent conversion can only be committed where a person *"has obtained or assumed control of the property of another person"*[xiii] (emphasis added). Where, as in this case, a company director deals with property belonging to the company (namely, cash at bank or an overdraft facility), she is not converting the property of the company's customers.

(c) The decisions in Smith and Sheaf are authority for the proposition that the issue of 'entrustment' is one of fact for the jury. That much is true: but it is important to recognize that the question (of fact) whether there has been any entrustment can only arise if it is established (as a matter of mixed law and fact) that the relevant property did not belong beneficially and unconditionally to the accused at the relevant time. The judgments in Smith and Sheaf cannot be interpreted as meaning that the legal question of beneficial ownership is also one of pure fact for the jury. If that is what the court intended to say in those cases, then we would respectfully disagree, and we would hold that that is not the law of this jurisdiction. The true identity of the beneficial owner of property is a conclusion of law, based on the facts.

(d) Finally, Pilkington does not advance the debate in this Reference because the only point of law in that case was whether the indictment had correctly identified the person who had been defrauded.[xiv] In so far as the decision was based on any point of principle, it adds nothing to the authority of Smith and Sheaf that the question of entrustment is one of fact for the jury. In so far as it involved the court dealing with the facts, they were materially different from the present case because the defendant in Pilkington was an estate agent, and *"the inference was irresistible that [he] was receiving the money as stakeholder"*.[xv] As such, it does it advance the debate any further to note that, in a subsequent civil claim by a purchaser against a vendor to recover a deposit paid to a third party purporting to act as an estate agent, Pilkington was not followed: Sorrell v. Finch [1977] AC 728.

The second question

32. In relation to the Attorney-General's second question, the same two preliminary issues need to be resolved: is it *"a point of law"* at all, and (if so) has it *"arisen in the case"* within the meaning of Article 45(1)? In our judgment, the answers are the same as in relation to the first question: on its face, the Attorney-General's second question raises a point of law, but it is not obvious that the point arises in this case, because the Deputy Bailiff's Ruling was not predicated on the basis that he was bound to withdraw the case from the jury simply because, as a matter of form, the contracts between the accused and her customers were characterized as contracts of sale. As we have already said, his Ruling was on the basis that there was no evidence to go to the jury, and the fact that the case involved simple contracts of sale formed part of his overall assessment.

33. Nevertheless, in the interests of clarity, we will again answer the question as posed. In our judgment, the answer to the Attorney-General's second question is that, in any case where a transaction is *prima facie* styled as a contract for sale, a jury is not necessarily prohibited from considering all the circumstances of the transaction and concluding that there was an 'entrustment for a purpose' so as to render the defendant guilty of fraudulent conversion – so long as the answer to the separate question of mixed law and fact has established that the relevant property which was allegedly converted by the defendant did not belong beneficially and unconditionally to him.

34. The case-law on which the Attorney General relied under this heading does not advance the debate:

    (a) The only question in Laurens was whether there had been any evidence upon which the jury could convict the defendant of fraudulent conversion. The defendant had promoted the formation of a company, and for that purpose he had solicited money from members of the public, but in the event he had pocketed the money for his own use. On those facts, the Court of Appeal held that it was open to the jury to convict him of fraudulent conversion – if he *"was under a contractual obligation to use [the money] for the formation and promotion of the company"* [xvi](emphasis added). By contrast, the court also said that, if the facts had been different and the case had simply involved a contract for the sale and purchase of shares in an existing company, there could not have been an entrusting of money capable of supporting a charge of fraudulent conversion.[xvii] In our judgment, that is fatal to the Attorney-General's argument. His attempt to align the facts of this case with the facts in Laurens is misplaced, because this case was simply one of sale and purchase. As noted above, the fact that the accused did not hold sufficient stock to meet each order as and when it was placed, or when the deposit or purchase payments was made, does not alter

the legal character of the contract; nor does it alter the fact that the correct identification of the legal character of the contract is by definition a conclusion of law, not a question of pure fact for the jury. If and in so far as Laurens might be interpreted as suggesting otherwise, we would hold that it does not represent the law of this jurisdiction.

(b) The report of R v. Hughes [1956] Crim LR 835 is too brief to be on any assistance. It involved an appeal based on an alleged mis-direction of the jury, but the terms of the direction are not included in the report. As it stands, it certainly does not cast any doubt on the analysis outlined above.

The third question

35. In relation to the Attorney-General's third question, the first task is again to ascertain whether it raises a point of law at all, and (if so) whether it is a point that arises in this case. In our judgment, the answer to both questions is 'yes'. First, it is (or at least it involves) a point of law because the question whether the Deputy Bailiff was correct to find that there was no case to put to the jury turned on the question whether the relevant property belonged beneficially and unconditionally to the accused and/or her trading companies. And, for that reason, it is a point of law that arose in this case.

36. Furthermore, the very fact that the Attorney General has asked this Court whether the Deputy Bailiff was *"correct to find as a matter of law that entrustment could not or did not arise"* (emphasis added) is a tacit acknowledgment that principal thrust of his argument in this Reference is wrong. His main point is that the issue of entrustment is one of pure fact for the jury, but in posing his third question (rightly, in our judgment) as one of law, he is accepting that the issue is not one of pure fact.

37. Nevertheless, although the Attorney General has posed the question as one of law, he has attempted to answer it by reference to the facts. In particular, he submitted that (a) in light of the matters outlined in para. 11(c)(i) & (ii) above, there was evidence upon which a jury, properly directed, could have concluded that any of the arrangements into which the complainants had entered gave rise to an 'entrustment for a purpose' [xviii] and (b) since the question of entrustment is one of fact for the jury, the issue should properly have been left to them.[xix] We do not consider that these arguments affect the analysis, and we are not satisfied that the Attorney-General's argument under this heading is properly within the scope of Article 45. We entirely accept that the matters outlined in para. 10(c)(i) & (ii) above would, if proved, have supported the prosecution case that any conversion was dishonest: indeed, the Advocate Jones candidly accepted that he

had *"never submitted that there was a lack of prima facie evidence of dishonesty".* [xx] But they cannot logically support a conclusion of law that the relevant property, being funds available to the accused's trading companies, were fraudulently converted by her from her customers.

Conclusion

38. For the reasons given in this judgment, and assuming for the sake of argument that the Attorney-General's questions fall within Article 45, we would answer them as follows:

(a) In order for there to be *"entrustment for a specific purpose"* in the context of an allegation of fraudulent conversion, there does not have to be direct evidence from the owner of property that he/she entrusted that property to the accused for a specific purpose: the jury is entitled to infer that the accused was so entrusted, having considered all the circumstances of the case.

(b) Where a transaction is *prima facie* styled as a contract for sale, the jury is not prohibited from considering all the circumstances of the transaction and concluding that there was entrustment for a purpose so as to render an accused guilty of fraudulent conversion.

(c) The Deputy Bailiff, as he then was, was correct to find as a matter of law that entrustment could not or did not arise on the evidence presented by the Crown in this case.

Authorities

Court of Appeal (Jersey) Law, 1961.

Marriott v. Attorney General [1987-88] JLR 285.

R v. Laurens [1916] 11 Cr App R 215.

Archbold (36th edition.)

R v. Preddy (John Crawford) [1996] AC 815.

R v. Grubb [1915] 2 KB 683

R v. Smith [1924] 2 KB 194

R v. Sheaf [1927] 19 Cr App R 46

R v. Pilkington [1958] 42 Cr App R 62.

Sorrell v. Finch [1977] AC 728

R v. Hughes [1956] Crim LR 835

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[i]Para. 1.3 of the Respondent's Outline Submissions.

[ii] Para. 16(c) of the Notice of Reference.
[iii] Ibid.
[iv] Ibid.
[v] Para. 23 of the Notice of Reference.
[vi] Para. 24 of the Notice of Reference.
[vii] Cf para. 16(c) of the Notice of Reference.
[viii] Cf para. 16(c) of the Notice of Reference.
[ix] Ibid.
[x] Ibid, §29.
[xi] Ibid, at 688.
[xii] Ibid, at 689 – 690.
[xiii] bid, at 689.
[xiv] Ibid, at 284.

[xv] Ibid, at 285.

[xvi] Ibid, at 217.
[xvii] Ibid, at 216.
[xviii] Paras. 28 – 32 of the Notice of Reference.
[xix] Para. 33 of the Notice of Reference.
[xx] Para 2.16 of the Respondent's Outline Submissions.