[1991–92 Gib LR 411]

BROTON v. GUY

SUPREME COURT (Alcantara, A.J.): November 17th, 1992

Criminal Law—theft—effect of intoxication—evidence of intoxication by drink or drugs may be relevant to show accused lacked specific intent to steal—issue for determination is not whether accused incapable of forming intent but whether in fact intended to steal

The appellant was charged in the magistrates' court with theft.

The appellant stole a handbag from an elderly lady in the street. He was apprehended by an off-duty policeman who saw him with the handbag. The policeman later gave evidence that he had appeared to be under the influence of drink or drugs. When questioned, the appellant stated that he was short of money and depressed, and had decided to take the handbag on the spur of the moment. He was seen by his doctor, who gave evidence that he had appeared to be in an abnormal state and confused about what had happened, and gave the opinion that he must have been more so at the time of the offence. At his trial, the appellant claimed to remember nothing about the events in question, since he had taken drugs that day.

The Stipendiary Magistrate convicted the appellant of theft, stating that intoxication was no defence to the charge.

On appeal, the appellant submitted that since theft was an offence requiring proof of a specific intent, and since his intoxication had precluded the forming of such an intent, he had been wrongly convicted.

The Crown submitted in reply that evidence of intoxication did not in itself negative the necessary intent required for the offence of theft, and since the appellant had clearly formed an intent to steal notwithstanding his intoxicated state, he had been properly convicted.

Held, dismissing the appeal:

The appellant had been properly convicted. Since, on the evidence, he had decided to steal the victim's handbag, the fact that he might have been intoxicated at the time and had therefore acted in a manner which was out of character was no defence. Evidence of intoxication would be relevant only to the extent that it could disprove the necessary intention which was an element of theft. Accordingly, the question for the arbiter of fact was not whether the appellant had been capable of forming the intention to steal but whether he in fact did so. For this purpose it was immaterial whether his intoxication resulted from the consumption of alcohol or drugs (paras. 10–17).

Cases cited:
(1) *R.* v. *Garlick* (1980), 72 Cr. App. R. 291; [1981] Crim. L.R. 178, applied.
(2) *R.* v. *Mathieson* (1906), 25 N.Z.L.R. 879, applied.
(3) *R.* v. *Sheehan*, [1975] 1 W.L.R. 739; [1975] 2 All E.R. 960; (1975), 60 Cr. App. R. 308, followed.

K. Azopardi for the appellant;
P. Dean, Senior Crown Counsel, for the Crown.

1 **ALCANTARA, A.J.:** This is an appeal against a conviction for theft by the Stipendiary Magistrate on October 7th, 1992. The appeal was dismissed on November 11th, 1992. I am now giving my reasons.

2 The general grounds of appeal in the notice of appeal are stated thus:

> "(a) the learned Magistrate was wrong in law in holding that the defence of self-induced intoxication negativing *mens rea* was not available;
>
> (b) my conviction was against the weight of evidence; and
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> (c) in all the circumstances of this case my conviction for theft in relation to events of September 3rd, 1992 is unsafe and unsatisfactory."

3 The facts of the case are as follows. An 83-year-old lady, Mrs. Pilar Martinez, living in Victoria House, Alameda Estate goes to the 6.45 p.m. Mass daily at the Cathedral. On the day in question, September 3rd, 1992, after hearing Mass, she set out with her friend, Esperanza Gomez, back to her house, travelling South. At the end of Main Street, just before the Archway, she saw a young man, the defendant, lying on a bench facing upwards. She was carrying her handbag on her right hand. Inside her handbag she had a £10 note, some coins and other items. The young man appeared to be sleeping when she passed him.

4 On reaching Trafalgar Cemetery she saw the young man behind them walking. The young man then passed in front of them and then fell back behind them again. When they approached Victoria House the defendant passed them again, but she lost sight of him because of parked cars. The old lady then went towards the entrance of Victoria House and as she entered the defendant snatched her handbag from behind and ran off. She started to shout.

5 Luckily, an off-duty policeman was in the vicinity. He attended, obtained a description, and saw the defendant with a lady's handbag. He apprehended the defendant. Luckily also, the old lady was not hurt and the police recovered all her property. At the defendant's trial the police officer stated in his evidence that the defendant, when apprehended, was

not quite normal and that, from his experience, he thought he had consumed drink or drugs.

6 At the police station the defendant was questioned by the police and later, about two hours after being arrested, he made a voluntary statement This is what he said:

> "Today someone stole my new motorbike, a booster, and I was depressed. I sat on a bench and started thinking about my problems. I cannot afford to take my girlfriend out anywhere. I give my mother £20 a week and I keep £20. When I was thinking I saw a woman walking, an old woman. With all the problems that I have I saw that she had a bag on her wrist very badly held, and suddenly I thought of the bag and went behind her and took it from her wrist and ran away."

7 At his trial on October 5th, 1992, a month after the event, the defendant went into the witness-box and said (in answer to questioning):

> "I do not remember anything of that day because I had been taking pills."
>
> "Ten pills that day."
>
> "Dalmane 15."
>
> "Yes, I've got a problem with drugs."
>
> "No, I don't remember nothing."

8 The defence also called a medical practitioner, Dr. Valarino. This witness testified that he had examined the defendant and found that he was in an abnormal state and highly confused; full of contradictions, as if he did not remember or know what had happened earlier. Dalmane is a cerebral depressant and addictive. It can have severe effect on the brain. He had seen the defendant a few months before but had not prescribed Dalmane. In an affidavit filed and read with the consent of the Crown and the leave of the court the doctor says: "My medical opinion is that his mental state must have been worse at the time of the events surrounding the arrest, approximately four hours prior to my visiting him at the police station."

9 Although it is not on the record of appeal, it is accepted that when the learned Stipendiary Magistrate convicted, having first adjourned to consider a number of submissions by the defence, he said: "Intoxication is no defence." This, counsel says, is a misdirection; hence the first ground of appeal.

10 I think that I should try and make clear this question of intoxication as a defence. The first proposition is to be found in *Blackstone's Criminal*

Practice, para. A3.8, at 38 (1991), where it is stated: "Intoxication is not a defence as such." The learned editors go on to say (*ibid.*, para. A3.10, at 39), in relation to crimes where specific intent is required (like theft), that "it is open to the accused to adduce evidence that he lacked the specific intent required by these offences due to voluntary intoxication."

11 The second proposition is to be found in the headnote to *R.* v. *Garlick* (1) in the *Criminal Appeal Reports*, where it was held (72 Cr. App. R. at 291) that "when the question of an accused's drunkenness arose, it was not a question of his capacity to form the necessary intent that was in issue, but simply whether he did form such an intent . . ."

12 The third proposition is to be found in 2 Archbold, *Criminal Pleading, Evidence & Practice*, 43rd ed., para. 17–49, at 1370 (1988): ". . . [T]he law as to the responsibility of a man whose mind is impaired by drink at the time of the alleged offence . . . will apply equally to the case where it is impaired by drug . . ."

13 The fourth proposition is what is the proper direction or self-direction in such cases. This is to be found in the judgment of Geoffrey Lane, L.J. in *R.* v. *Sheehan* (3) (60 Cr. App. R. at 312):

> ". . . [I]n cases where drunkenness and its possible effect upon the defendant's *mens rea* is an issue, we think that the proper direction to a jury is, first, to warn them that the mere fact that the defendant's mind was affected by drink so that he acted in a way in which he would not have done had he been sober does not assist him at all, provided that the necessary intention was there. A drunken intent is nevertheless an intent."

14 Mr. Dean has referred me to Williams, *Textbook of Criminal Law*, at 419–420 (1978), where Professor Glanville Williams, in his clear, brilliant and inimitable style when dealing with the criminal law, refers to this subject:

> "No rule of law declares that intoxication negatives the intent (or other mental state). The only rule is that the defendant may give evidence of intoxication, and this evidence may in certain cases help to convince the jury or magistrates that he did not have the mental element. A person who is charged with the theft of an umbrella may give evidence that he is an absent-minded Professor and did not think what he was doing, or that he was drunk; the evidence may help him to an acquittal, but what gets him off is not the fact that he is a Professor, or was drunk, but that the jury or magistrates are not sure that he intended to steal."

15 Finally, there is a most helpful case, *R.* v. *Mathieson* (2), to be found in 1 *Russell on Crime*, 12th ed., at 85 (1964):

"The English rule as to the effect of drunkenness on criminal responsibility seems to have been correctly laid down in a New Zealand case, *R*. v. *Mathieson*.

> The indictment contained two counts: (1) for stealing tobacco and cigarettes in a store; (2) for breaking into the store with intent to steal. The defence raised was that the defendant was so drunk as not to be responsible. Cooper J. charged the jury as follows: 'If a man chooses to get drunk, it is his own voluntary act. In cases, however, where the intention is the main ingredient in an offence, drunkenness may under certain circumstances amount to a sufficient defence . . .'
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> In the first count, alleging an actual theft, you must be satisfied that the prisoner, if he took the cigarettes, did so with a fraudulent intent; and in the second count, the intent is the sole ingredient of the alleged offence. The offence would not be complete under the second count unless the store was broken into by the prisoner with intent to commit an offence. . .
>
> If that intent existed it does not matter whether the prisoner was drunk or sober, for a criminal intent may exist in the mind of an intoxicated person, and if so his drunkenness is no excuse. But if the drunkenness is such as to take away from his act all criminal intent, then his act is not criminal. If the prisoner blundered into the store through a drunken mistake, and under such circumstances as to indicate inability to form any definite purpose, and especially to form the purpose of committing a larceny, then he ought to be acquitted. If, on the other hand, although under the influence of liquor, he was not so intoxicated as to be unable to form such purpose, and knew what he was about, then his partial intoxication will not excuse him."

A footnote (*ibid.*) states:

> "The jury found that the prisoner had blundered into the store under a drunken mistake, and without any intention to commit an offence, but that while in the store he appropriated the cigarettes and knew then and there that he was taking the cigarettes of another person. On this finding, a verdict of larceny was directed."

16 I have come to the conclusion that the learned Stipendiary Magistrate did not misdirect himself. Ground (a) of the notice of appeal fails. In so far as Grounds (b) and (c) are concerned, there was more than sufficient evidence to convict. The actions of the defendant and his subsequent admission would justify any jury convicting without a shadow of a doubt.

17 The evidence of the doctor goes to the question of capacity, not to the question of intent to steal at the time of the offence. I would have been very surprised if the learned Stipendiary Magistrate had not convicted.

Appeal dismissed.