

TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff

v.

LEROY J. MICK, Defendant

Criminal Case No. 223

Trial Division of the High Court

Mariana Islands District

November 9, 1968

Charges of embezzlement and grand larceny. The Trial Division of the High Court, R. K. Shoecraft, Chief Justice, held that evidence presented failed to establish that the accused was guilty of either embezzlement or grand larceny beyond a reasonable doubt and found accused not guilty.

1. Embezzlement-Elements of Offense

The elements of embezzlement are: lawfully obtaining personal property of another; taking and carrying away that personal property without the owner's knowledge or consent; and taking and carrying away of that personal property with the intent to permanently convert it to his own use.

2. Larceny-Grand Larceny-Elements of Offense

The crime of grand larceny requires the stealing, taking and carrying away of the personal property of another, of the value of \$50 or more, without the owner's knowledge or consent with the intent to permanently convert that property to his own use.

3. Criminal Law-Burden of Proof

In order for one to be convicted of embezzlement or grand larceny, it is necessary that the government prove beyond a reasonable doubt all of the essential elements of such crimes.

4. Criminal Law-Intent-Specific Intent

Evidence that there was no concealment or secrecy on the part of the defendant and no active subterfuge, lack of proof that he received any personal or private gain from his misappropriation and evidence that he offered to make complete restitution of all materials are facts to be taken into consideration in determining whether or not the necessary criminal intent is present to prove embezzlement or grand larceny.

5. Criminal Law-Generally

The law presumes a defendant to be innocent of crime and this is the strongest presumption known to criminal law.

6. Criminal Law-Burden of Proof-Reasonable Doubt

A defendant, although accused, begins the trial with a clean slate with no evidence against him, and the presumption of innocence alone is sufficient to acquit a defendant unless the court is satisfied beyond a

reasonable doubt of the defendant's guilt from all the evidence in the case.

7. Criminal Law-Generally

Unless and until outweighed by evidence in the case to the contrary, the law presumes that a person is innocent of a crime or a wrong.

SHOECRAFT, *Chief Justice*

[1, 2] The defendant in this case, Criminal Case No. 223, is charged in count 1 of the amended information filed by the District Attorney with the crime of embezzlement, and in count 2 of that same amended information with the crime of grand larceny. The elements of embezzlement are

(1) lawfully obtaining personal property of another;
(2) taking and carrying away that personal property without the owner's knowledge or consent; and

(3) the taking and carrying away of that personal property with the intent to permanently convert it to his own use.

The crime of grand larceny requires the stealing, taking and carrying away of the personal property of another, of the value of \$50.00 or more, without the owner's knowledge or consent with the intent to permanently convert that personal property to his own use.

In response to motion of the defendant, the Government furnished a bill of particulars which was intended to specify the nature and value of the personal property alleged to have been embezzled and/or stolen. At a later hearing, the defendant contended that the answers represented by the numbers 6 and 7 in the bill of particulars were not responsive to the questions allowed by the court at the time the bill of particulars was ordered to be furnished. The Government then amended the bill of particulars as to 6 and 7 by making the following statement:-

"We are contending that wages and materials were misdirected in repair of the Pedro Cruz house and this repair occurred in the

later half of 1967. The other wages and materials transaction involved the repair of a bar owned by Vicente Manglona and that occurred in the latter part of 1967."

[3-7] In order for the defendant to be convicted of the above named crimes, it is necessary that the Government prove beyond a reasonable doubt all of the essential elements of those crimes. Evidence that there was no concealment or secrecy on the part of the defendant and no active subterfuge, lack of proof that he received any personal or private gain from his misappropriation and evidence that he offered to make complete restitution of all materials are facts to be taken into consideration in determining whether or not the necessary criminal intent is present. The law presumes a defendant to be innocent of crime. This is the strongest presumption known to the criminal law. Thus, a defendant, although accused, begins the trial with a clean slate with no evidence against him, and the presumption alone is sufficient to acquit a defendant unless the court is satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence in the case. Unless and until outweighed by evidence in the case to the contrary, the law presumes that a person is innocent of a crime or a wrong.

In reviewing the testimony of each witness who appeared for the Government, we find that Francis Carion, an accountant in charge of files and books of Micronesian Development Company, hereinafter referred to as MDC, testified that two refrigerators were shipped to Tinian in February 1968 and that these refrigerators were valued at \$100.00 each. Vicente Manglona testified that he saw the refrigerators, or reefers, which terms we consider to be synonymous, and that a certain Mr. Corpstein told him, the witness, to take the refrigerators to Antonio Borja's house. There is no indication in the testimony that the defendant was directly or indirectly involved in whatever transpired concerning these refrigerators. Mr. Carion also

testified that MDC had various items of construction materials and heavy equipment located at Tinian and that the company rented equipment at times to others.

Another witness, Alfred Fleming, testified that he operates a merchandise store at Tinian and that he rented certain items of construction equipment from MDC for use in the construction of a new store and that he was told by the defendant that his bill for the use of that equipment was \$385.00. Mr. Fleming testified that the defendant requested a setoff of this amount against the accounts at the Fleming store of the defendant and two other MDC employees. Upon cross-examination, this witness verified a conversation he had with counsel for the defendant in Tinian in which he stated to counsel that the defendant did not give him a bill for the equipment or that defendant told him to deduct the rental costs from his store bill. Another witness, Mrs. Rosalia Fleming, testified at one point that defendant did not talk with her about the equipment rental bill. She further testified that defendant gave her a check for the amount shown on the invoice for merchandise and that she paid him \$385.00 for which she did not receive a receipt. She further testified that after the investigation of this matter commenced, she wrote a note on the back of the prosecution's Exhibit 2, a statement headed "Coral", "Paid in the month of December '67. Between 19-23, 1967, total paid \$385.00 by Rosalia A. Fleming." The defendant himself testified that he did seek and receive a setoff of \$385.00 and that this amount represented money of MDC which he later collected and then loaned to Soledad Borja, for which she gave a promissory note payable to MDC.

Several witnesses testified that, pursuant to instructions of the defendant, work was performed and materials used on the property known as the Pedro Cruz house and the Vicente Manglona Bar. There is no question that such work

was actually performed and materials used. However, there is a serious conflict in the testimony as to whether this work and use of materials was unlawfully ordered performed or expended by the defendant or that this had no relationship to his duties as manager of MDC. There is, throughout most of the testimony, an inference that this work was performed and materials expended on these two properties for the personal benefit of a person named Soledad Borja but, here again, a witness, Ramon G. Damapan, testified that Soledad Borja was an employee of MDC and that she worked as a filing clerk, assistant payroll clerk, that she assisted in preparing monthly reports and that she also cleaned the office. He further testified that he kept a record of her time. While the President of the MDC testified that the defendant never asked permission to do any work on houses outside of the MDC compound and that MDC had no interest in the Manglona or Borja houses, there is nothing in the record to substantiate an inference that the defendant caused the work performed and material expended with a fraudulent intent.

It may well be that, in the words of the District Attorney, wages and materials were misdirected in repair of those houses on the authority of the defendant; however, the defendant is here charged with serious crimes and the elements of those crimes have not been proved to the extent that the court is convinced beyond a reasonable doubt that those crimes have in fact been committed.

The court, therefore, finds the defendant not guilty and so acquits the defendant. Bail is released and defendant is ordered discharged.