
ROUND 1

(CRIMINAL MATTER)

2014

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ROUND 1

State v Johnston

OVERVIEW

The defendant, Veronica Johnston, is charged with stealing arising out of an incident at BuyNow store Hamilton Heights on 27 November 2013. At approximately 4 pm on 27 November the Defendant was observed acting in a suspicious manner by the BuyNow store manager. After the Defendant left the store she was stopped and questioned. A close examination of the Defendant's trolley revealed a hidden can of deodorant the property of the BuyNow store that had not been paid for by the defendant. When the defendant was questioned she denied any knowledge of the item being in her possession. The prosecution alleges that the defendant has committed the offence of stealing contrary to section 378 of the Criminal Code.

Attached are the following:

1. Prosecution Notice
2. Legal Notes
3. Statement of Store Manager [Peta Todd]
4. Statement of Arresting Officer [Joanna McDonald]
5. Statement of Accused [Veronica Johnston]
6. Statement of Witness [Frank Paragon]

**Criminal Procedure Regulations 2005
Prosecution Notice**

Western Australia Criminal Procedure Act 2004 Magistrates Court at PERTH No: 4026 of 2014		Prosecution Notice	
Details of alleged offence ¹	Accused	Veronica Johnston	
	Date or Period	27 November 2013	
	Place	Hamilton Heights	
	Description	Stealing	
	Written Law	Sec 371 Criminal Code	
Notice to Accused	You are charged with the offence described above, or the offences described in any attachment to this notice. The charge(s) will be dealt with by the above Court.		
Accused's Details ²	Date of Birth	16/01/1960	Male/Female Female
Prosecutor ³	Address	Hamilton Heights	
Person issuing this notice ⁴	Full name	Joanna McDonald	
	Official title	Constable	
	Work address	Police Station Hamilton Heights	
	Work telephone	(08) 9264 7521	
	Signature	<i>J.T. Spriggs</i>	
	Witness's Signature⁴	<i>Thomas More</i> JP/Prescribed court office	
Date	This prosecution notice is signed on 21 February 2014		

LEGAL NOTES

The Criminal Code provides (relevantly):

378. Penalty for stealing

Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 7 years.

371. Steal, meaning of

(1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person any property, is said to steal that thing or that property.

(2) A person who takes anything capable of being stolen or converts any property is deemed to do so fraudulently if he does so with any of the following intents, that is to say —

- (a) An intent to permanently deprive the owner of the thing or property of it or any part of it;
- (b)
- (c)
- (d)
- (e)
- (f)

(3)

(4)

(5)

(6) The act of stealing is not complete until the person taking or converting the thing actually moves it or otherwise actually deals with it by some physical act.

(7) In this section, **property** includes any description of real and personal property, money, debts, bank credits, and legacies and all deeds and instruments relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods and also includes not only such property as has been originally in the possession or in the control of any person but also any property in which or for which it has been converted or exchanged and anything acquired by the conversion or exchange, whether immediately or otherwise.

Summary re the Elements of the Charge:

The elements of the crime are:

- (1) A taking of some property;
- (2) The property was capable of being stolen;
- (3) The property belonged to another person.
- (4) The property was taken with an intent to permanently deprive the owner of the thing taken.

Comment:-

The Prosecution bears the onus of proving, beyond a reasonable doubt, the case against the Defendant.

The most difficult issue in this case, which the prosecution must prove beyond a reasonable doubt, is that the can of deodorant was taken by the defendant with an intention to permanently deprive the BuyNow store of the can.

The prosecution will also need to prove that the can of deodorant was the property of BuyNow.

Statement of Peta Todd

- 1 Peta Todd of 12 Amden Crescent, Wattle Downs, Western Australia.
- 2 I am the Manager of the BuyNow Store at Hamilton Heights Western Australia.
- 3 I was on duty at the store on 27 November 2013 at approximately 5.40 pm. I was in the store room at the rear of the store recording some stock that had just come that afternoon.
- 4 I received a sms from the checkout supervisor. It said: "she is back – 8." Aisle 8 is our cosmetic Aisle.
- 5 Our store video in that area was faulty at that time and I couldn't check the aisle. I went immediately to the checkout supervisor, Mel Thomas.
- 6 Mel said that a Veronica Johnston had entered the store. I asked Mel to call the Police. I went to the aisle and saw Veronica Johnston.
- 7 Veronica is well known in our store and we have long suspected that she has been stealing from our store.
- 8 I went to the bottom of the aisle 8. The bottom of aisle 8 is towards the back of the store. I could see Veronica from that vantage point. There were some other people in that aisle. I saw Veronica move down the aisle with a person I know, Frank Paragon. I saw them talking to each other and then bump into one of our store employees, Natasha. Natasha was putting items onto the cosmetic shelves. A number of items fell from the shelves. I saw Veronica and Frank pick some up and hand them to Natasha. I saw Veronica drop one item into her shopping trolley. She has her own trolley, it is like a large bag on two wheels.
- 9 I then went to the front of the store. A few minutes later I saw Veronica walk up to the counter. She placed some items on the counter and paid for them.
- 10 Veronica then made her way to the front sliding doors of the store. At that point, before she was leaving I approached Veronica. I asked her if she would mind allowing me to see in her trolley bag. She reacted very abusively.

- 11 I said: "Veronica, if you have nothing to hide why can't I look in your trolley." Veronica would not allow me to do so. I said: "Veronica Johnston I have reason to suspect that you have stolen from the store and I would like you to wait with me while the police are called." I had no sooner finished talking to Veronica when the Police arrived.
- 12 I said to the Police officer: "this is Veronica – she has been shoplifting." The Police officer then said: "Veronica please come with me to the Manager's office." We all went to my office. In the office the Police officer said to Veronica: "Veronica please empty out all the items from the Trolley on to the desk."
- 13 Veronica then emptied the contents of the trolley onto my desk. I checked off all the items on the desk against the docket Veronica had. All of the items on the docket were on the desk.
- 14 But, there were no cosmetic items on the desk. I then looked in the trolley. It was empty. The trolley was the type that had a cover at the top and the cover was folded down inside the trolley. I pulled up the cover and an item then fell into the trolley. I picked it up – it was a can of personal deodorant.
- 15 The can had a "BuyNow" price sticker on it.
- 16 I said: "look this wasn't on the docket." Veronica said: "I didn't put it in there."
- 17 The police officer said: "Veronica, I am arresting you for stealing this can of deodorant. You do not have to say anything if you do not wish to do so but anything you do say may be used in evidence against you." Veronica said: "I didn't know it was there – I am not a thief."
- 18 The Police officers then left with Veronica.

Statement of Joanne McDonald

- 1 Joanne McDonald, Police Constable of care of Police Station.
- 2 I am a Police constable assigned to the Hamilton Heights Police Station.
- 3 On 27 November 2013 I was on duty at the Police Hamilton Heights Police Station. The police station is approximately 500 metres from the BuyNow store.
- 4 Approximately 4 pm as a result of a call, Police Constable Greig and I left the police station in our police van and attended at the BuyNow Store Hamilton Heights.
- 5 On arriving at the shops we went straight to the Manager, Peta Todd.
- 6 The manager was standing with a person I now know to be Veronica Johnston. The manager said: "this is Veronica – she has been shoplifting." I said: "Veronica please come with me to the Manager's office." We all went to the manager's office. In the office I said to Veronica: "Veronica please empty out all the items from the Trolley on to the desk."
- 7 Veronica then emptied the contents of her trolley onto the manager's desk. The manager checked off all the items on the desk against the docket Veronica had. All of the items on the docket were on the desk.
- 8 I saw the manager look into Veronica's trolley. She pulled out a deodorant spray and said: "look this wasn't on the docket." Veronica said: "I didn't put it in there."
- 9 I said: "Veronica, I am arresting you for stealing this can of deodorant. You do not have to say anything if you do not wish to do so but anything you do so may be used in evidence against you." Veronica said: "I didn't know it was there – I am not a thief."
- 10 We then took the Defendant to the Police Station. She declined a video interview and declined to make any further statement. She was charged and was allowed to go once Bail had been arranged.

Statement of Veronica Johnston

- 1 Veronica Johnston of 45 Landrail Road, Hamilton Heights, retired accountant.
- 2 On 27 November 2013 I left my home and walked the one kilometre or so to the BuyNow Store in Hamilton Heights.
- 3 I like to walk to get out of the house and get some exercise. I retired after a lotto win a few years back. I don't want to say how much I won but it was a 7 figure sum. I still maintain my usual lifestyle and live in the same house but travel for 6 months of the year. I love travel.
- 4 I left home about 3.45pm. I took a little shopping trolley. It is like a large bag on wheels and has a leather top that fits over the opening to make it water proof.
- 5 I arrived at the shop and started shopping in the store, just grabbing a few grocery items to cover me for a few days.
- 6 After picking up some groceries I bumped into my friend Frank Paragon. Frank and I have been friends for many years. He is a wonderful person.
- 7 After we were chatting for a while I invited Frank back to my place for a cup of tea.
- 8 We then walked down the cosmetics aisle on our way to the check outs. We were chatting about my trip to South America. I had recently been to Peru and found it fascinating. I was so engrossed in my conversation with Frank that I was not looking where I was going and I bumped into young Natasha who works in the store. I have known Natasha and her family for years.
- 9 I almost knocked Natasha off her ladder and cans of deodorant went everywhere. Frank and I were pretty well pelted with the things.
- 10 I apologised to Natasha and Frank and I helped pick up some of the cans and gave them to her.
- 11 I then made my way to the checkout. I emptied my trolley and placed all the items on the counter and paid for them.
- 12 I then made my way to the front sliding doors of the store. As I was leaving, the store manager approached me. She asked me if I would mind

- allowing her to see in my bag. I was shocked and out of anger I said: "No!"
- 13 The manager said: "Veronica Johnston I have reason to suspect that you have stolen from the store and I would like you to wait with me while the police are called."
- 14 Before I could answer the Police arrived.
- 15 The manager said to the Police officer: "this is Veronica – she has been shoplifting." The Police officer then said: "Veronica please come with me to the Manager's office." We all went to the manager's office. In the office the Police officer asked to me empty out all the items from the trolley on to the desk.
- 16 I emptied the contents of the trolley onto the desk. The manager then looked in the trolley and pulled out a can of personal deodorant.
- 17 I said, "I don't know how that got there."
- 18 The police officer said: "Veronica, I am arresting you for stealing this can of deodorant. You do not have to say anything if you do not wish to do so but anything you do say may be used in evidence against you."
- 19 The Police officers then put me in the back of a police wagon – I was so embarrassed.
- 20 At the police station I was so anxious to leave I refused a video interview and left with Frank.
- 21 I can't believe this has happened to me.

Statement of Frank Paragon

- 1 Frank Paragon, retired bus driver of 23 MacPeece Road, Hamilton Heights, Western Australia
- 2 On 27 November 2013 at approximately 3.50pm I was at the BuyNow Store Hamilton Heights.
- 3 I have been going to the same shops for nearly 15 years. I am a regular you might say.
- 4 When I was at the shops I bumped into my friend Veronica Johnston.
- 5 We started chatting near the meat counter. The meat counter is at the back of the shop and runs past the end of the last aisles of the shop.
- 6 Veronica Johnston asked me if I wanted to come back to her place for a cup of tea. I agreed.
- 7 Veronica Johnston said "I have finished my shopping." I said: "same here let's make a move Vee." I call Veronica Johnston 'Vee.' Saying let's make a "move, Vee" is a little joke. Vee finds it very amusing. She had a bit of a giggle.
- 8 We then made our way to the checkouts. As we did so we went down the aisle with the cosmetics in it. Veronica and I were chatting about her trip to Peru.
- 9 I have to confess we were not looking where we were going. As we chatted Veronica bumped into a shop assistant on a ladder thingy. Things went flying everywhere. Cosmetics rained down on us like confetti. I don't know if you have ever been hit by a can of deodorant but it packs a punch.
- 10 I was so embarrassed I said to the young shop assistant: "I am so sorry love, wasn't looking where I was going. Can I give you a hand with this stuff?" I am retired and it was no trouble for me to help out – my time is my own as the advert for the SES says.
- 11 In fact I am a long-standing member of the SES have been a member since my early retirement 12 years ago. I think it's great to be able to help out the community.

- 12 When we got to the checkouts Veronica and I went through the checkouts at roughly the same time but through different checkout lanes.
- 13 I packed my stuff and as I was doing so the store manager came up to Veronica Johnston and said something to her. I couldn't hear what it was but I went up to them.
- 14 I know the store manager. She is not a very nice person. A very suspicious person you might say.
- 15 On more than one occasion I have seen the store manager accuse someone of taking stuff then insist that they empty their bags only to find nothing stolen.
- 16 Before I knew it the police arrived. They took Veronica Johnston to a room in the store. I waited. About 20 minutes later Veronica left the store with the Police. I was in shock. I went down to the Police station and waited for Veronica and went surety on her bail. Veronica was in shock. She was very distressed. The young Police officer was obviously upset at having to charge Veronica. She said: "I'm sorry Veronica, I have to do my job." I think the young officer could see there had been a mistake.
- 17 The cosmetic item must have dropped in to the trolley when we bumped into the shop assistant.