

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN  
[SQUARE BRACKETS].

**IN THE DISTRICT COURT  
AT DUNEDIN**

**I TE KŌTI-Ā-ROHE  
KI ŌTEPOTI**

**CRI-2018-012-002484  
CRI-2019-012-000108  
[2020] NZDC 502**

**NEW ZEALAND POLICE**  
Prosecutor

v

**TANIA LEE BEGG**  
Defendant

Hearing: 13 January 2020  
Appearances: Sergeant J Somerfield for the Prosecutor  
D L Henderson for the Defendant  
Judgment: 13 January 2020

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**ORAL JUDGMENT OF JUDGE M B T TURNER**

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**Charge**

[1] The defendant, Ms Begg, has denied a charge of obtaining by deception laid under s 241(a) Crimes Act 1961. The charge arises out of the sale and purchase of a Samsung mobile phone in October 2018.

**Police position**

[2] The police case is that the defendant offered to sell the phone and ultimately entered into an agreement with [the complainant] for the sale of the phone to him for

\$750. The police allege [the complainant] paid that money to the defendant who failed to deliver the phone to him.

[3] The police case is that the defendant obtained the money by way of a false representation, that she had possession or control over the phone and was able to deliver it to [the complainant]. The police further assert that she knew the representation was false or was reckless as to whether it was false in a material particular.

[4] The police called three witnesses in support of the prosecution:

- (a) [The complainant], who gave his evidence as to the circumstances under which he agreed to purchase the phone, the circumstances under which he gave the defendant \$750 and evidence as to steps take by him to obtain the phone after payment of that sum to the defendant. He produced Facebook Messenger and text messages between himself and the defendant relating to the transaction.
- (b) A [witness 1] gave evidence. In October 2018 he was employed by Spark at [store deleted]. He gave evidence as to his dealings with the defendant in relation to this matter.
- (c) Finally, [Detective A] gave evidence and produced the DVD interview of the defendant of 1 November 2018 in relation to this prosecution.

[5] The defendant, Ms Begg, elected to give evidence and was cross-examined.

### **Legal principles**

[6] The starting point in this matter is, of course, the presumption of innocence. Ms Begg is to be presumed innocent until and unless the police prove beyond reasonable doubt the essential elements of the charge brought against her. That Ms Begg has given evidence does not alter that burden of proof. If I find the defendant's evidence is unreliable then the correct approach is to set that evidence to

one side, examine the balance of the evidence and determine whether that evidence establishes, to the required standard, each of the essential ingredients of the charge.

## **The evidence**

### *Police evidence*

[7] [The complainant] was a student in Dunedin in late 2018. He was interested in purchasing a cellphone for his girlfriend. His evidence is that he saw a Samsung Galaxy S9 for sale on Facebook listed at price of around \$1000. He engaged in electronic communication via Facebook Messenger with the vendor (the defendant). She told him that she was selling the phone on behalf of [her employer] as the phone was surplus to requirements because the employer had over-ordered the number of phones required by the business.

[8] The electronic messages produced make it clear that the phone was to be picked up from [a Spark store] as it had been purchased online. The defendant's emails to [the complainant] indicated that the phone had been paid for in full.

[9] After an exchange of correspondence [the complainant] said he agreed to buy the phone but later indicated his girlfriend had changed her mind. He then agreed to buy it for \$750 but was unable to complete the transaction that day. Several days passed and he contacted the defendant to ask whether the phone was still available. On 19 October the defendant contacted [the complainant] and said it was, and that her "boss" was firm at a price of \$750. That sum was repeated in further communications by the defendant on 20 October 2018. [The complainant] agreed to pay that sum.

[10] In terms of payment for the phone, [the complainant] arranged to meet the defendant at about 5.30 pm on 20 October; he did so. The defendant drove [the complainant] to [the Spark store], and parked outside. At that point he was shown a number of documents by the defendant which appeared to him to be receipts for the phone.

[11] The defendant said she would go inside the store and collect the phone. At the same time [the complainant] went to an ATM and withdrew \$750. When he returned to the car he waited because the defendant was still inside the Spark store. Subsequently, she emerged and explained that Spark did not have the phone in stock but it would be available the following day. She said she would pick up and take [the complainant] to the Spark store for him to collect it. She then required payment of the \$750 which [the complainant] handed over.

[12] Subsequently, the parties agreed to meet the following day at around 9.15 am to enable [the complainant] to uplift the phone from the Spark shop. After an exchange of messages the defendant said she had to work but she would meet [the complainant] at 4.00 pm.

[13] [The complainant]'s evidence is that he never saw the defendant after paying her the \$750 on 20 October 2018, that she never met with him to pick up the phone from the Spark store, that she never gave him the phone, nor did she return his money. He said that he sent further electronic communications to the defendant which were not answered.

[14] In cross-examination [the complainant] denied that outside the Spark shop there had been a change in the agreement with an increase in the purchase price to \$1000. He said there was no such conversation. In fact his evidence was that subsequent to the transaction, and as a result of the delay in handing him over the phone, the defendant offered him a refund of \$100 to be paid when she delivered the phone to him. He referred to an email (on page 5 of exhibit 2), timed at 9.37 pm, to support his evidence. He said this email followed a voice message from the defendant in which she said she would deliver him the phone and give him \$100 for all the trouble that he had been put to. [The complainant] denied that he had blocked the defendant on his Facebook Messenger account at the relevant time, although he acknowledged doing so at a later date.

[15] [Witness 1]'s evidence relates to a conversation he had with the person who entered the Spark store in Dunedin on 20 October to pick up a Samsung phone which

had been purchased online by an account holder – a [person X]. There was no challenge to [witness 1]’s evidence that the person he spoke to was the defendant.

[16] [Witness 1] said he explained to the defendant that unless she could produce some identification in photographic form, she would not be able to access another person’s account, including [person X]’s. It seems the defendant became upset and agitated at hearing this.

[17] After she left the store [witness 1] was moved to make notes about this discussion on [person X]’s account and he contacted the fraud department of Spark. The following day he said a young man came into the store and asked why he had not received a Samsung phone. This person showed [witness 1] a photograph of a person on Facebook. [Witness 1] identified that person as the person he had spoken to the previous day – the defendant. At this point [witness 1] referred the young man to the police.

[18] [Detective A] interviewed the defendant, recorded on DVD on 1 November 2018. In that interview the defendant claimed:

- (i) That she did not agree to sell the cellphone to [the complainant] for \$750, saying, “Why the fuck would I sell an \$1800 phone for \$750, the listing is on Facebook.”
- (ii) She claimed that she agreed to sell the phone for \$1000 and the \$750 she received from [the complainant] was a down-payment only.
- (iii) She claimed she had possession of the phone and that it had been in her car.
- (iv) She told police that her car was stolen, as was the phone.
- (v) She said she had made a complaint to the police as to the theft of the car, the theft of this phone and another Galaxy S9 which was also in the car.

- (vi) She said as soon as [the complainant] paid the rest of the money she would pay the insurance excess amounting to \$199, go to Spark to obtain the replacement phone and then provide it to him.
- (vii) She claimed that the phone was in the name of her business, a cleaning business (“First Clean Last Clean”) but refused at that point to tell police the name of the business.

[19] In summary, the defendant told police that she had listed the phone for sale at \$1200 or near offer, that [the complainant] had offered \$750 but she declined that because she wanted \$1000. He agreed to pay that much to her and paid her \$750 by way of deposit. Subsequently, the phone was stolen from her car. She said that she was ready and willing to get a replacement phone and deliver it to [the complainant] once he had paid the balance of \$250 as the insurance excess was \$199.

*Defendant's evidence*

[20] The defendant gave evidence. She confirmed that she had listed the phone for sale on Facebook for \$1200. After what she described as a long and drawn out process where [the complainant] said he wanted the phone and then he did not want the phone, he made it clear to her that he wanted to buy it. At that point she said she needed to speak to “[person X]”, who it transpires from her evidence is a director of [her employer] and she said that she worked for him. She said that after doing so (ie, speaking with [person X]) she confirmed with [the complainant] that [person X] was “okay” with the sale proceeding and that because of all of the “back and forth” which had gone on, the price had risen to \$1000.

[21] The defendant said this price was agreed to after she had picked up [the complainant] and taken him to the Spark store but before she went inside the shop and before he went to the ATM. She confirmed [witness 1]’s evidence that in the shop she was told that she needed photo ID before she could access someone else’s account and uplift any phone that was waiting for that person. She confirmed that when she left the shop she received \$750 from [the complainant] and claimed that she had made

arrangements to pick him up the next day and take him to the Spark shop to collect the phone. Her evidence is that the next day she waited for him at the appointed pick-up point and time but he never turned up. Had he done so, she said, she would have given him the phone but he ultimately blocked her from his Facebook and/or text message account and she was unable to communicate with him.

[22] In the course of her evidence-in-chief she was asked by her counsel where the phone was and she replied she still had it and that she had obtained it from [person X]. She said that she had been given permission by [person X] to sell the phone and that the money she received from [the complainant] was to be given to [person X].

[23] In cross-examination the defendant confirmed that she worked for [person X] who she said was a director of [her employer]. She also said that [person X]'s son, who apparently actually ran the business, would not be aware of the private arrangement between herself and [person X]. On further questioning it transpired that she was not actually being paid by [person X], rather he was mentoring her, helping her because she wanted to set up the cleaning business, "First Clean Last Clean."

[24] When directed to the electronic communications between her and [the complainant] which said that money he had paid had been refunded or credited to [the complainant]'s bank account and would be cleared within a day or two, the defendant said she understood that to be the case from something [person X] had said to her.

### **Analysis of the evidence**

[25] There is a direct conflict in the evidence between [the complainant] and the defendant as to the terms of the agreement for sale and purchase of the phone. [The complainant] gave clear, coherent and logical evidence as to the circumstances under which he agreed to purchase the phone, the purchase price being \$750, the events surrounding him paying the money to the defendant and his not receiving the phone, and further, the efforts he made to contact the defendant to obtain the phone. His evidence was supported by the documentary evidence in the form of Messenger correspondence and text messages.

[26] He denied there had been any change to the agreed purchase price of \$750 to \$1000 or that the payment he made to the defendant was by way of deposit only. He denied blocked the defendant from his Messenger and/or text account at the relevant time.

[27] There was no challenge to [the complainant]'s evidence that when the defendant emerged from the Spark store she told him that the phone was not in stock but would be there the following day; that is telling in my view.

[28] The defendant's suggestion that [the complainant] had blocked her from electronic communication on or about 22 or 23 October, after the defendant had sent a message saying that the money had been transferred back into his account and would clear around Tuesday lunchtime, is illogical. [The complainant] either wanted the phone or his money back. It would make no sense that he would block the defendant's communication immediately after she had sent him a message saying that the money had been transferred back into his account, but would not clear until the following day. It is equally illogical to suggest that he would block the defendant on those accounts yet send her subsequent messages about the matter.

[29] I consider [the complainant] to be an honest and credible witness. On the other hand I find the defendant's evidence littered with inconsistencies and untruths. Several examples serve to demonstrate this.

- (a) The defendant told police that the cellphone was in her business account's name, yet the electronic correspondence and her evidence itself indicated the phone to be sold was owned by "[person X]" or [the employer].
- (b) The defendant told police that [the complainant] had offered \$750 for the phone but she said, no, she wanted \$1000. That is entirely inconsistent with the electronic communications which plainly show the agreed price for the phone at \$750.

- (c) The defendant told police that the \$750 was not refunded because [the complainant] said he wanted the phone. That is inconsistent with [the complainant]'s evidence and the electronic communications, in particular the text message of 22 October in which the defendant said the purchase price had been paid into [the complainant]'s account. That text message was sent the same day [the complainant] had indicated he wanted the money paid into his account and had given details of it saying that he wanted the money paid into his bank account, "now."
  
- (d) The defendant told [the complainant] the phone was not stock but would be there the next day. It is clear from the defendant's evidence, and that of [witness 1], that such statement was untrue. She was not able to pick up any phone waiting there because she did not produce identification which would enable her to access a [person X]'s account. It is clear from her own evidence that there was no phone waiting for her in her or her business' name.

[30] Overall, I find the defendant's evidence to be unreliable and untruthful. In the circumstances I put her evidence to one side.

[31] I find it established beyond reasonable doubt the following facts:

- (a) The defendant and [the complainant] agreed to the sale and purchase of a Samsung phone at a cost of \$750.
  
- (b) The defendant drove to the Spark shop in Dunedin telling him that she would pick up the phone which was waiting inside.
  
- (c) [The complainant] went and obtained \$750 from his bank account at a nearby ATM.
  
- (d) On returning from the Spark shop the defendant said the phone was not in stock but would be there the following day. Based on what the

defendant told him [the complainant] paid the full purchase price of \$750.

- (e) I am satisfied, beyond reasonable doubt, that in subsequent discussions the defendant offered to pay [the complainant] \$100 when she delivered the phone to him as recompense for the trouble he had been put to.
- (f) I reject the defendant's assertion that the message of 9.37 pm (on page 5 exhibit 2) was intended to mean and read that she was out of town and would be an hour away from Dunedin. Within 30 minutes the defendant sent another message to [the complainant] saying she was coming in from South Dunedin. That text message is inconsistent with the defendant's evidence as to the meaning of the 9.37 pm message.
- (g) Despite his efforts to obtain the phone or a refund of the money [the complainant] was unsuccessful. I consider the defendant to have been evasive in responding to [the complainant]. Her claims that he had blocked her account are simply untrue.

[32] I now apply those facts to the elements of the charge which the police must prove beyond reasonable doubt:

- (a) I am satisfied beyond reasonable doubt that the defendant obtained directly from [the complainant] possession of the sum of \$750. That was not disputed by her.
- (b) I am satisfied beyond reasonable doubt the defendant obtained that sum by deception. She made a number of false representations to [the complainant] knowing them to be false in a material particular. When she exited the Spark store she told [the complainant] the phone was not in stock but would be there the next day. It was on this basis he handed over the \$750. The defendant knew that to be untrue. She had been refused access to a [person X]'s account because she could not prove to

the store's satisfaction her identity and authority to uplift any phone held by Spark for him.

- (c) I am satisfied beyond reasonable doubt the defendant intended to deceive [the complainant] when she obtained possession of the \$750. She knew that the phone was not available, that she had no right to access [person X]'s account if a phone was waiting for him and she had no phone waiting for her either in her personal or business name.
  
- (d) Finally, I am satisfied beyond reasonable doubt that the defendant obtained possession of the \$750 without a claim of right. The defendant did not have a belief in a proprietary or possessory right in the property in relation to which the offence is alleged to have been committed. There was no evidence, save for the defendant's, that she was authorised by [person X] to uplift the phone on his behalf. It is relevant that I have found the defendant to be a witness whose evidence is unreliable and untruthful. The evidence establishes the defendant did not have a cellphone waiting for her, either in her personal or business name. In the circumstances she had no proprietary or possessory right in the money which [the complainant] paid for her.

[33] I am satisfied the police have proved beyond reasonable doubt all essential elements of the offence.

### **Result**

[34] I find the defendant guilty of the charge.

M B T Turner  
District Court Judge