203/1958

203/58

G.P.-S.1568732—1956-7—9,000. S. U.D.J. 445.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(Appellate DIVISION).
AFDELING).

APPEAL IN CRIMINAL CASE.
APPÈL IN STRAFSAAK.

DUNNY HENRY CHURCHILL
Appellant.

versus/teen

THE QUEEN
Respondent.

Appellant's Attorney / *Prokureur van Appellant* — *Respondent's Attorney* / *Prokureur van Respondent*

Pro Deo.

Appellant's Advocate / *Advokaat van Appellant* W.J. Hefer — *Respondent's Advocate* / *Advokaat van Respondent* D.J. vd Byl.

(Leave ito P.D. Point of Law)

Set down for hearing on: / *Op die rol geplaas vir verhoor op:* Monday, 9th March, 1959.

1.3.59. (A)

9.45 – 12.50 } CAV
2.15 – 2.50 }

JUDGMENT: THURSDAY, 26th MARCH, 1959.

Appeal upheld. The Conviction on the Charge of abduction is revesed. The whole Sentence is struck out & the matter remitted to the Trial Court to pass Sentence afresh on qs 1 Act 50/1956.

Coram: Fagan, C.J., Hoexter, de Beer, van Blerk et Ramsbottom, JJA

Record.

IN THE SUPREME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION)

In the matter between :-

DUNNY CHURCHILL - Appellant,

and

REGINA - Respondent.

Coram ; Fagan,C.J., Hoexter, De Beer, Van Blerk et Ramsbottom, JJ.A.

Heard : March 9th, 1959. Delivered ;

J U D G M E N T.

DE BEER, J.A. :

The appellant appeared before Dowling, J., on the following charges: 1. The theft on the 16th February, 1958, at Louis Trichardt of a motor-car the property or in the lawful possession of Phillip van Hoff and/or Thomas Carlton or in the alternative, contravention of Section 33 (2) of Ordinance 17 of 1931 in that, on the date and place named, he, without the knowledge or consent of the person in lawful charge of the motor-car, rode in or drove

/it. ...../2.

it.

2. On the date and place named, he unlawfully abducted certain JOHANNA JACOBA LUBBE, an unmarried girl under the age of 21 years from the custody of and against the will of her father and mother with the intention of having sexual intercourse with her.

At the conclusion of the trial the presiding judge convicted the Appellant of contravening the following provision contained in Section 1 of the General Law Amendment Act (No. 50 of 1956) :-

> "Any person who, without bona fide claim of "right and without the consent of the owner "or the person having the control thereof, "removes any property from the control of the "owner or such person with intent to use it "for his own purposes without the consent of "the owner or any other person competent to "give such consent, whether or not he intends "throughout to return the property to the "owner or person from whose control he removes "it, shall, unless it is proved that such "person, at the time of the removal, had "reasonable grounds for believing that the "owner or such other person would have con- "sented to such use if he had known about it, "be guilty of an offence and the court con- "victing him may impose upon him any penalty "which may lawfully be imposed for theft."

and sub-section 2 provides that,

> "Any person charged with theft may be found "guilty of a contravention of sub-section (1) "if such be the facts proved."

/The.....3.

The Appellant was also convicted on the abduction charge. The two crimes were treated as one for the purposes of sentence and the following was imposed - 4 years imprisonment with compulsory labour of which 1½ years were suspended for three years on condition that during that time the Appellant do not commit any offence involving either dishonesty or sex for which he is sentenced to a punishment of imprisonment without the option of a fine.

The trial Court having arrived at the conclusion, with some hesitation that the Appellant was guilty on the abduction charge, of its own motion proceeded to reserve a question of law for the consideration of the Court of Appeal in these terms:-

> "Whether in order to prove the offence
> "of abduction it is necessary to prove
> "knowledge on the part of the accused
> "that the girl was under the age of 21
> "and if so whether there is evidence
> "on the record sufficient to prove that
> "he had such knowledge."

As framed, the question of law reserved is open to the following objections. In the first place the presiding judge approached the problem on the basis that mens rea was an essential element of the crime and the onus of establishing such mens rea rested on the crown. This ruling was definitely

/in...../4.

in favour of the Appellant for if mens rea were not an essential element the Appellant must necessarily have been convicted on the production of evidence which merely went to show that the girl was under the age of 21 years and that she had been removed from the custody of her parents without their consent. That raises the question whether, in the case of a conviction, the trial Court can reserve as a question of law an alternative which places a heavier onus on an accused and which must also have resulted in a conviction.

The second objection levelled at the question as reserved, was that it in effect incorporates the question whether there is on the record evidence sufficient to prove that he had such knowledge. This is not a question of law. However, in the course of argument, and with the consent of the Crown, the matter was regularised by granting general leave to appeal against the conviction for abduction.

Now this crime is defined by Gardiner and Lansdown (p.1635) as follows:-

> "Abduction is the crime of taking an
> "unmarried woman under the age of 21
> "out of the possession and against the
> "will of such persons, parents or guar-
> "dians, with the intention that the
> "accused or someone else may marry or

/have...../5.

"have carnal connection with such person.
"Seduction unaccompanied by deprivation
"of possession is not abduction."

Although the crime of abduction was well-known in Roman-Dutch Law, it presumably applied only to those cases where the minor was, against the will of her parents or guardians, removed from their custody and control with the intention that the accused or someone else should marry her: but where the minor was so removed with the intention that the accused or someone else should have sexual intercourse with her, it was merely seduction which did not constitute a crime. The difference was attributable to the fact that in the case of marriage there was present the element of permanent deprivation of parental control and that this did not apply where the intention was merely to have sexual intercourse - De Wet and Swanepoel, Strafreg, (pp. 232 et seq.). The conclusion arrived at by the authors of "Strafreg" finds ample support in our older Authorities, but the principle that abduction is committed by merely removing a minor from parental control for sexual purposes is so deeply engrafted into our case law that the principle must now be accepted as established. In any event the question is now of merely academic interest since the promulgation of Section 13 of the Immorality

/Act...../6.

Act (No. 23 of 1957) which provides:

> " (1) Any person who takes or detains "or causes to be taken or detained any "unmarried male or female under the age "of twenty-one years out of the custody "and against the will of his or her "father or mother or guardian, with "intent that such person or any other "person, whether a particular person or "not, may have unlawful carnal intercourse "with such unmarried male or female, "shall be guilty of an offence.
>
> " (2) The term 'guardian' in this sec- "tion includes any person who has in law "or in fact the custody or control of "the unmarried male or female."

In future such abduction charges will no doubt be formulated under this section.

There is a remarkable dearth of authority on the next question raised, namely, whether mens rea, in the sense that the accused was aware that the girl was under the age of 21 years, is an essential element of the crime. In statutory offences this question has been very fully considered in a series of cases commencing with Rex versus Wallendorf, (1920 A.D. 383), followed, amongst numerous others, by Rex versus H. (1944 A.D. 121) and Rex versus Britz (1949-3 S.A.L.R. 293). The doubts so often encountered arising from certain passages appearing in this series of

/cases.....7.

cases, were finally eliminated by Schreiner, J.A., in the Britz case where it was stated that:-

> "The re-statement of the law in Wool-
> "mington's case is that the burden of
> "proof in criminal cases rests on the
> "Crown throughout, save in cases of
> "insanity and in cases where the effect
> "of a statute is to plcae the burden on
> "the accused."

The learned Judge of Appeal then refers to the following passage from Maxwell on Statutes (8th Edition p. 169) :-

> "The intention which appears to be most
> "in accord with convienience, reason,
> "justice and legal principles should,
> "in all cases of doubtful significance
> "be presumed to be the true one."

and proceeds:-

> "That it is not necessary, in order to
> "constitute a statutory exception as that
> "expression is used by Lord Sankey,
> "that the statute should specially refer
> "to the onus of proof or should by express
> "language lay it upon the accused is
> "illustrated by those cases in this Court
> "in which it has been held that where a
> "statute in absolute terms prohibits an
> "act it may nevertheless be interpreted
> "as creating not an offence in which a
> " person may be held guilty without mens
> "rea (as in Rex v. Weinberg (1939, A.D.
> "71)), but one in which, while it is
> "an essential of the offence, the onus
> "rests upon the accused to prove its
> "absence. (See Rex v. Wallendorf (1920
> "A.D. 383) ; Rex v. H. (1944, A.D.121);
> "Rex v. Innes-Grant(1949 (1), S.A.L.R.753))

/In ...../8.

> " In case of unqualified prohibitions
> "it is generally not possible to decide
> "from the language of the prohibitory
> "provision itself whether mens rea is
> "an element of the offence or not, but
> "the Court decides in respect of each
> "provision, having regard to the factors
> "referred to in Rex v. H.at pp. 125 et
> "seq., whether the offence created
> "includes a mental element; if it does,
> "the accused is not given the benefit
> "of the general Woolmington principle
> "but is, because of the unqualified
> "prohibition, saddled with the burden
> "of proving his innocent mind by a
> "balance of probabilities."

Now if the principles applicable in statutory offences where the provision imposes an absolute prohibition were to be applied to common law crimes, namely, that where once the crime is brought within the four corners of the definition of such crime the onus would then be cast upon an accused to establish, upon the balance of probabilities, the absence of mens rea, then no doubt the Appellant would here be guilty unless he established mistake or the like, and, in advancing mistake of fact as a defence in a criminal charge the mistake must not only be a bona fide belief but must also be a reasonable belief - Rex versus Mbombela (1933 A.D. 269). To this aspect I shall revert at ~~xix~~ a later stage.

The restatement of the law in Woolmington's case

/referred ...../9½

referred to in the judgment of Rex versus Britz must be read subject to the qualification that the onus which rests on the Crown must be discharged beyond a reasonable doubt - see Rex versus Ndhlovu (1945 A.D. 369 at p. 386). That this is in conformity with Roman-Dutch Law appears from van der Linden, Carpzovius, Matthaeus and other authorities to which the Court was referred during argument.

Counsel for the Crown accepted this position but submitted that this onus had on the evidence been discharged beyond reasonable doubt: for this reliance was placed upon the following facts as found by the trial Court. The Appellant knew that the girl was at the time residing in her parent's home: she was in fact not quite 18 years of age. The Appellant was aware that it was an offence to remove a girl under the age of 21 years from the control of her parents and admits he made no enquiries concerning her age. In reply to a question whether it did not strike him that she was not an adult, he replied:- "To my estimation when I looked at her I would say that she was over 21 and the way she spoke about her independence that she had already worked for two years." That the

Appellant was not speaking the truth is clear from an extract from his evidence following this statement:-

"By the Court: Did she tell you she had "worked for two years? - No, I heard "that in her evidence.

" She did not say she had worked for "two years. She said she had been at "the hospital for six months? - (No re- "ply)"

However, in the judgment the following appears:- "The Court was able to observe her appearance and, I think, that it may be said that it could be thought that she was 21." The trial Court rejected the girl's evidence because "she is a mendacious witness. I cannot find it therefore, proved, on her evidence that the accused knew that the girl was only 18 years or under 21."

In attacking the conviction Counsel argued that although the Appellant treated the matter of the girl's age in a casual, if not negligent manner, yet "dolus and culpa (in the sense of negligence) are distinct conceptions, underlying distinct fields of legal liability. They can never be identical: for the one signifies intention, and the other connotes an absence of intention." per

/Innes.....11.

Innes,C.J., in Rex versus Nkosi (1928 A.D. 488). In the later case of Rex versus Myers (1948 (1) S.A.L.R. 375) the headnote which accurately summarises the judgment reads as follows:-

> "Negligence in making enquiries or un-
> "reasonableness in drawing inferences
> "from the known facts, whether such
> "negligence be gross or of a lesser degree,
> "can never in themselves amount to an
> "absence of honest belief. The conduct
> "of the representor may be such as to
> "warrant the inference that he was neither
> "negligent nor unreasonable but that he
> "did in fact know his representation was
> "false, or that his belief in its truth
> "was the outcome of a 'fraudulant
> "diligence in ignorance', but in a crimi-
> "nal case unless this inference is proved
> "beyond a reasonable doubt the charge
> "against him must fail."

In dealing with the finding that :- "I cannot on the evidence find it, therefore, proved on her evidence that the accused knew that the girl was only 18 years or under 21 years." Our attention was directed to the following passage which records the cross-examination of the girl by the Appellant. After he had elicited from her the admission that when leaving Louis Trichardt on the 16th February the Appellant may have been under the impression that she was over the age of 21 years, the cross-examination proceeds:-

> "Waar was ons op die 18de Februarie?...

/Ons.....12.

"Ons was die 18de op Lichtenburg gewees.

" Toe was dit die eerste keer dat ek

"van jou moes verneem dat jy nie 21 is

"nie maar 18 jaar oud? - Ja."

It must, however, be borne in mind that in her evidence in chief the girl stated that she told the Appellant at Lichtenburg what her age was and she was being cross-examined on this. In view of the trial Court's specific finding that the girl's statement that she had ~~not~~ told him what her age was, could not be accepted, I can only interpret this as a rhetorical question which does not necessarily contain any implied admission.

To deal with another point raised on behalf of the Crown, namely, that in removing the girl from the custody of her parents at Louis Trichardt and cohabiting with her at Boksburg, Koster, Lichtenburg and then again at Koster where he was ultimately arrested, the appellant, a married man with a family, committed an immoral act and that this evidence sufficed to establish mens rea, Centlivres, J.A., in Rex versus H. (supra at p. 129) states :-

"I have not been able to find any case
"in which it has been held (otherwise than
"by way of obiter dictum as was the case
"in Rex versus Prince) that the mere fact
"that the accused has done an act which
"he knew to be morally wrong supplies

> "the necessary mens rea. Kenny in
> "Outlines of Criminal Law criticises
> "the dictum on the ground that it has
> "the inconvenience of substituting
> "the vagueness of an ethical standard
> "for the precision of a legal one."

No authority was cited in argument supporting this proposition nor have I been able to find one and I am therefore disposed to decide this point in favour of the Appellant.

Finally the Trial Court found that the evidence already referred to coupled with the Appellant's "suspicious and contemptible behaviour in hiding under a servant's bed" when he learned from some newspaper that the girl was only 18 years, justified the inference that the Crown had established mens rea beyond reasonable doubt. The Appellant had also heard a policeman ask where the driver was of the car he had taken without authority and this in itself might have been a reason for him to hide. Moreover, even if he had a feeling of guilt with regard to the girl now that he had learnt her real age, that does not show that he had previously known or suspected her to be under 21 and I beg to differ from the presiding Judge's finding that mens rea had been established as

/to.....14.

to my mind the evidence falls short of this: The explanation given by the Appellant is both reasonable and bona fide: the Trial Court itself held that the girl may appear to be over 21 years of age and the finding that the Appellant was never informed of her real age supports the contention that his belief may have been bona fide and I am of the opinion that the appeal succeeds. In the result the conviction on the charge of abduction is reversed. The whole sentence is struck out and the matter remitted to the trial Court to pass sentence afresh on the contravention of section 1 of Act No.50 of 1956.

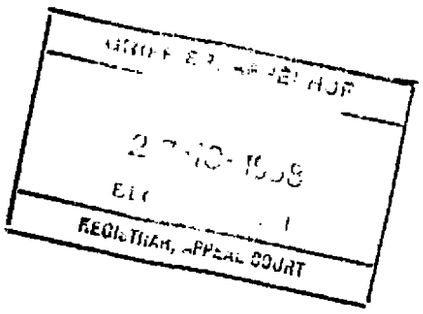
E. M. DE BEER

PAGAN, C.J.
HOEXTER, A.A.
VAN BLERK, J.A.
RAMSBOTTOM, J.A.

certified

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(Noordelike Rondgang Distrik Plaaslike Afdeling)



R E G I N A

versus

DUNNY CHURCHILL

(Skuldigbevind aan 'n oortreding van Artikel 1 van Wet 50 van 1956 en Ontvoering en gevonnis deur DOWLING, R. op 9 Augustus, 1958.)

DOWLING, J.: The accused in this case, a European male, is charged, in the first instance, with the theft of a motor-car in the possession of Phillip van Hof or Thomas Carlton. Secondly, he was charged with abduction, the allegation being that he abducted certain Jacoba Johanna Lubbe, an unmarried girl under the age of 21 from the custody of and against the will of G.F. Lubbe, her father, and Frances Johanna Lubbe, her mother, with the intention of having sexual intercourse with her. As regards the first charge it is clear that the accused on the 16th February 1958, took from Louis Trichardt, a motor-car belonging to the Company known as South African Amusements (Pty) Limited and used that motor-car for his own purposes for a considerable time, proceeding to Lichtenburg and Koster with it. In the course of this journey the accused admittedly sold the spare tyre of the motor-car and also, on the Crown evidence, sold a radio set which was installed in the motor-car and which he removed. The accused says that he did not sell this set but pledged it and intended to retrieve it at a later stage. The Crown indicated that it did not wish to proceed on these acts in relation to the tyre of the motor-car and radio as separate offences and indicated also that it did not seek an amendment to cover a charge of theft of these articles. As regards the motor-car the accused on his own admission knew that he would not have obtained the consent of the owner or their agents, director and secretary Van Hoff and Carlton, to take the car. The Crown relies on the statutory provision which makes it an offence to take a car or any other property and to use it without the consent of the owner. The provision

in question is contained in section 1 of the General Law Amendment Act 50 of 1956 which reads as follows: "Any person who, without bona fide claim of right and without the consent of the owner or the person having the control thereof, removes any property from the control of the owner or such person with intent to use it for his own purposes without the consent of the owner or any other person competent to give such consent, whether or not he intends throughout to return the property to the owner or person from whose control he removes it, shall, unless it is proved that such person, at the time of the removal, had reasonable grounds for believing that the owner or such other person would have consented to such use if he had known about it, be guilty of an offence and the court convicting him may impose upon him any penalty which may lawfully be imposed for theft." and sub-section 2 provides that "Any person charged with theft may be found guilty of a contravention of sub-section (1) if such be the facts proved." The intention of the accused was drawn to this provision at the opening of the case. There is no doubt at all that he was guilty of contravening that section. As the Crown has not pressed for a conviction of theft the accused is found guilty of contravening section 1 of the Act that I have just quoted.

The further question to be decided is whether the accused is guilty of the crime of abduction. It is clear that he did in fact remove Miss Lubbe from Louis Trichardt, kept her with him, no doubt with her consent for a period, until he was arrested at Koster on the 23rd February 1958. There is no doubt in my mind that the accused took Miss Lubbe with the intention of having sexual

relations with her and in fact it is admitted that he did have such relations. The accused has said that the said Miss Lubbe informed him that she was living in Louis Trichardt but not with her parents who were at Lichtenburg. She complained of illtreatment and, according to him, suggested that he should take her away. Now on that point there is evidence, the evidence of a son aged 14 of Mr. and Mrs. Lubbe and there is the evidence of Miss Betty Jones, a friend of Miss Lubbe, that on the Saturday preceding the 16th February the accused came late at night to the house of Mr. Lubbe in Louis Trichardt and inquired about Miss Lubbe. He was told that she was not then in. He was also told that her father was not in but was at work at the power station which was pointed out by the boy Lubbe. Miss Jones also was present and spoke to the man in a black motorcar who we know was the accused and there was a conversation between them in the course of which a message was entrusted to Miss Jones to convey to Miss Lubbe that he would come and fetch her at 12 o'clock the next day. Now I reject the accused's evidence that he did not know that the girl was living with her father. I find on the evidence that he did so know and accordingly that part of the indictment which alleges that Miss Lubbe was under the custody of her father and mother is made out.

The difficulty that arises in this case is a matter of law to a certain extent. The question is whether the accused knew that Miss Lubbe was under 21 years of age. The evidence clearly establishes by way of her birth certificate and the evidence of her parents that at the time of her removal Miss Lubbe was 18 years and

no more. The Court was able to observe her appearance and, I think, that it may be said that it could be thought that she was 21. The accused said that he assumed that she was 21 because she was an independent person and working for herself. Miss Lubbe herself said that when they arrived at Lichtenburg she informed the accused that she was only 18. I am afraid that Miss Lubbe was not a witness who was a truthful one. The Crown correctly, I think, did not rely on her evidence. She was a mandacious witness. I cannot find it, therefore, proved on her evidence that the accused knew that the girl was only 18 years or under 21 years.

The question whether it is an essential part of the offence that the accused knew that the woman he abducted was under 21 years of age is a matter that has never been fairly and squarely decided in the Courts of this country so far as my researches indicate. My researches have necessarily been limited in point of time and with regard to the material available for research and the Crown was unable to offer any material assistance on that issue. The accused was not defended, he appeared in person and naturally he was not able to render any assistance either. The crime of abduction is defined in the work of Gardiner & Lansdown, South African Criminal Law in the following terms: "Abduction is the crime of taking an unmarried person under the age of 21 out of the possession and against the will of such persons, parents or guardians with the intention that the accused or someone else may marry or have carnal connection with such person". Nothing is said there in that definition about knowledge of the accused. It is not part of the definition that the crime can only

be committed by a person knowing that the girl is under the age of 21 years. If it were permissible to take guidance from statutory enactments such guidance is readily available in section 14 of Act 23 of 1957 which supersedes Act No. 3 of 1916 and provides in section 14(1) that "Any male person who has or attempts to have unlawful carnal intercourse with a girl under the age of sixteen shall be guilty of an offence". Subsection (2) provides: "It shall be a sufficient defence to any charge under this section if it shall be made to appear to the court that the girl or person in whose charge she was, deceived the person so charged into believing that she was over the age of sixteen years at the said time". If that by analogy would be the law applicable to the present case the accused would undoubtedly be guilty of the offence unless he can show that the girl or the person in whose charge she was deceived him into believing that she was over the age of 21 and that she was 21 years old or older. However, I do not think that a statute is a satisfactory guide to the common law in the circumstances of this case. It may well be that in the view of the legislature this provision is an equitable and fair provision and that, therefore, it would be equitable and fair in the present charge to place an onus on the accused of proving that he was so deceived. I do not propose to follow that course but to deal with the matter purely and simply on principle.

The question is whether the accused had mens rea. To my mind that is bound up with the question of whether he knew or must be deemed to have known that the girl was under the age of 21. There is authority in

the shape of an important English decision namely R. v. Prince (1875), 32 L.T. 700. In that case the accused was convicted under a statute of unlawfully taking an unmarried girl under the age of 16 years out of the possession and against the will of her father, although the jury found that the accused bona fide believed upon reasonable grounds that the girl was 18 years of age at the time. Of the sixteen judges who heard the matter on appeal, fifteen favoured the confirmation of the conviction, and, of these, seven supported the conviction on the ground inter alia that the accused, though under the belief referred to, in taking the girl away was doing an act which was wrong in itself, and eight were of the view that a man who does an immoral act must take the risk of its turning out to be criminal". If that decision is applicable to this charge there is no doubt at all that the accused had a guilty state of mind. He knew that what he was doing was wrong morally in fact grossly immoral. He was a married man with a child and he took this girl into the country for sexual purposes. It is not clear whether the principle enunciated in Prince's case forms part of our criminal law. I am inclined to the view that it does not and I, therefore, deal with this case on the footing that the Crown must show mens rea to an extent greater than knowledge that the act done was an immoral one. The accused on the evidence made no inquiries as to the girl's age. He made the assumption which I have mentioned. On the last day before he was arrested he tells this Court that in a cafe in Koster he saw a newspaper which contained the photograph of Miss Lubbe and indicated that she had

been missing from her home. The accused bought that newspaper, took it to the house where he was staying and went to the privy where he read the newspaper and he came out. He says that he went into the nearest room that he could find. He crawled under the bed of this room, which was a native servant's room and was found there by the police. That is an act which I may take into consideration in deciding whether in law the accused had a guilty mind. There is authority further that in certain cases a failure to make inquiry is indicative of mens rea in itself. I read a passage from Gardiner & Lansdown at page 53: "But if it be proved by the Crown that a person charged with a crime of which intention is an element wilfully abstained from access to all sources of information which might lead him to suspicion, and avoided all possible avenues to the truth for the express purpose of not having any doubt thrown on what he desired and had determined should be his belief, his state of mind would ordinarily not relieve him from criminal responsibility on the ground of absence of intention." In connection with that statement of the law I should mention that the accused admitted that he well knew what the crime of abduction was. He knew that it was the taking of a girl under 21 from her parents. Now I come to the conclusion not, I must say, without some hesitation that that circumstance, the fact that the accused made no inquiry, coupled with his suspicions and contemptible behaviour in hiding away under a servant's bed in a servant's bedroom is sufficient material to establish that the accused had mens rea. I, therefore, find the accused guilty of the charge of abduction.

As I have expressed these views with some hesitation, it seems to me proper that in convicting the accused I should reserve a question of law for the consideration of the Court of Appeal. That question of law will be "Whether in order to prove the offence of abduction it is necessary to prove knowledge on the part of the accused that the girl was under the age of 21 and if so whether there is evidence on the record sufficient to prove that he had such knowledge.

Mr. van der Byl: The accused has a list of previous convictions.

Accused: I admit the previous convictions.

Previous convictions handed in.

BY THE COURT : Do you wish to say anything in regard to your sentence?

ACCUSED: This being the first time I have appeared in a Superior Court, I am accepting the verdict of it, and wish to draw the Court's kind attention to the following:

I am 26 years of age, and have no excuse for my misdoings, only that I am blind at times to certain things that are wrong. Especially when a person takes advantage of my generosity and kindness, I admit I am easily led.

My wife will be prepared, even after all this that happened my Lord to tell you, that I am a home loving person, meaning that I do not go out and drink or waste my money. I usually give my wages to her as I get it, and takes a pride in the general happiness of my wife and child. I am non-drinker, and non-smoker,

and have very few vices that can otherwise cause my downfall.

I am a wireman - electrician, and I was earning £15 per week plus a caravan for my family and myself. Plus this I used to get 50% of the takings at the stall, which amounted to £3 to £5 per night.

My Lord, I am fully aware I have been a fool and am prepared to accept what I deserve but I beg your Lordship please to consider my wife and child. I can take the suffering but they are the ones that will suffer most.

I am imploring you my Lord, begging you, please to consider a suspended sentence. I am prepared to make restitution as to the car, etc. and my Lord I am confident if you place enough faith in me to give me this chance, I will never appear in a court again, as I have seen the loyalty towards me from the ones very dear to me and these past months has opened my eyes. I have learned and seen things, and had ample time in seeing the wrong I have done through pure foolishness of my own. I have no criminal tendencies hence I beg you my Lord do not send me to a place where I may be hardened and get a revolt against life.

Please my Lord I am left in your mercy, extend to me today a helping hand, which I will for ever and ever cherish and always keep in front of me on a straight and narrow road.

SENTENCE

DOWLING, J.: In the last six years you have been twice found guilty of the theft of a motor-car and you have been twice found guilty of the offence of which you were