

10th July, 1985

85/68

Court of Appeal

J.J. Clyde, Esq., Q.C., (President); Sir Patrick Neill, Q.C.;  
and J.M. Collins, Esq., Q.C.;

Appeal by Ronald Carl Brinne HINDS against conviction by the Royal Court (Inferior Number) on the 2nd April, 1985.

MR. CLYDE: "The appellant in this case was charged with 3 offences alleged to have been committed by him in the early hours of the 19th December, 1984. On count 1 he was charged with breaking and entering premises known as the Edelweiss Beach Cafe and Restaurant with intent to commit a crime. On the second count he was charged with maliciously setting fire to those premises and on the third count he was charged with breaking and entering a premises known as Rosewood, 2 La Route du Fort, with intent to commit a crime. He pled guilty to counts 1 and 3; so far as count 2 was concerned he pled 'not guilty' but was subsequently tried and convicted on that count. He was sentenced to 12 months imprisonment on each of counts 1 and 3 and to 18 months imprisonment on count 2. All sentences running concurrently. No question arises in this appeal so far as counts 1 and 3 are concerned; the appeal is solely concerned with count 2 and relates solely to conviction, not to sentence. The circumstances lying behind the incident with which count 2 is concerned, were briefly these: During the evening before the alleged incident, Hinds had been in the company of friends, latterly at a cafe and then at a disco. He had been drinking a variety of beverages, including wine, lager and later vodka and orange. He eventually was taken home by a friend, he walked into the house, gave his mother a picture he had made for her and then took the dog for a walk. He took the dog along Beach Road, along the promenade to the Edelweiss Cafe, he then broke in to those premises by breaking a window with a lump of concrete and crawling through - he cut his hand in the process. He then proceeded to look around the inside of the premises for money but was unable to find any. He started lighting matches for illumination and opening drawers to find money, when the matches burnt down to his fingers, he dropped them to the floor. After a time he left the premises and returned to find some papers which he thought he might have left there

again, he lit matches which he allowed to drop before they were extinguished. He then left for the second time without realising that at some stage, a fire had been started. It appears to be beyond dispute that the conflagration which developed was caused by one of his matches; it may be that it fell on some paper which may have been lying on the floor - it may be that it was a piece of paper dropped by him during his search. The appellant has tabled grounds of appeal that the verdict cannot be supported having regard to the evidence and in particular that the decision of the learned court that the accused foresaw that the fire might be caused and yet went on to take the risk of it cannot be supported having regard to the evidence. The point of the grounds so stated, relates to the form of the indictment which had to do with Article 17(2) of the Fire Service (Jersey) Law of 1959. That Article, sub-paragraph 2, says that "any person who maliciously sets fire to any material to which this article applies being the property of another, shall be liable to imprisonment for a term not exceeding 10 years". So far as the construction of that article is concerned, it does not appear to be in dispute, that the word 'maliciously' includes recklessness and it also appears to be common ground that recklessness may be defined as foreseeing that harm may occur and yet going on to take the risk of it. Thus the appeal raises the question whether there was evidence here on which recklessness could be held proved and critically the question is whether it could be held that the accused foresaw the risk of fire. The proposition in law which was advanced and as I understand it, not disputed, is that unless the accused can be shown to have foreseen the risk, he cannot be held to have been reckless; it is not enough that he ought to have foreseen it - it must be proved that he did foresee it. As Lord Edmund Davis observed in Regina against Caldwell in 1981, 1 All England Reports 961 at 969. "If a defendant says of a particular risk: 'it never crossed my mind', a jury could not on those words alone properly convict him of recklessness simply because they considered the risk ought to have crossed his mind, though his words might well lead to a finding of negligence." Advocate Le Marquand has argued that there was no evidence in this case to justify a conclusion of recklessness. So far as the appellant's evidence was concerned, it was to the effect that

he never applied his mind to the risk - indeed, whether he had been drunk or sober, it would never have occurred to him. We were shown other evidence which might suggest that his mental acuity was somewhat blunted by the effects of alcohol, that he was concentrating on the search for money, that he never thought about the possibility of seeing if the electric light could be switched on and that he cut his hand while making his entry. These considerations are at least consistent with this line of evidence that he never applied his mind to the risk of fire. There is also evidence relating to the construction and nature of the premises which would suggest that in any event, the risk of fire might be thought to be small and this again was pointed to as suggesting that it was less likely that in fact he did foresee any risk. The difficulty which there is in the case of identifying, in fact, the precise starting point of the fire and the nature of whatever flammable material it was, which led to the conflagration, reinforces the same point. The learned Solicitor-General, looked to 3 areas of evidence to seek to support the Court's conclusion that the accused did foresee the risk of fire. The first of these, was the evidence of the accused himself, the appellant himself, that he was aware that sometimes a lit match, when dropped, does not go out, but that general proposition does not entitle one to draw the conclusion that on this occasion he did foresee that dropping a lighted match would involve the risk of fire. The second matter to which the learned Solicitor-General pointed was related to an incident which occurred, according to the police witnesses, at about 4.57 on the morning of the alleged incident. On that occasion, it was said, according to the police that the appellant was offered a paper suit, in order to keep warm after his clothing had been removed, and that he had refused the paper suit saying: "No, thank you, it will probably catch fire". It was indicated on the police evidence that nothing had been said about a fire before, and this evidence might be thought to be relevant in indicating that, contrary to the appellant's evidence, he was in fact aware that a fire had started at the café. While the evidence might be relevant for that purpose, it does not appear that one would be entitled to infer from that incident anything more than that the appellant was aware, as a matter of generality, that if one drops a lighted object on lighted paper, a fire is likely to start. It does not entitle and

would not have entitled the Court here to conclude that on the occasion in question in the Edelweiss Beach Cafe, the appellant did foresee that if he dropped a lit match that there was a risk of fire in the circumstances. The third and the only other matter upon which the Solicitor-General sought to find was a passage in the evidence of one of the police witnesses, Detective Sergeant Nimmo, to the effect that according to him the appellant had stated that he had lit matches 'willy-nilly'. This evidence was not corroborated by the other police witness who was present at the time but even supposing it to be acceptable, whatever the words 'willy-nilly' may mean, a statement made by the appellant that he had lit matches 'willy-nilly' would not justify the Court in holding that he had dropped them, foreseeing that a risk of fire would occur. There is nothing else in the evidence which could be pointed to with any hope of success to support the Court's conclusion that the appellant had foreseen that harm might occur in dropping lit matches on either of the occasions in which he was present in the Beach Cafe on the early morning of 19th December, 1984. In those circumstances the Court was not entitled to reach the view that he had acted recklessly and in those circumstances there is no alternative but to allow the appeal and quash the conviction on the second count.