

BETWEEN

MACKAY

1665

Appellant

AND

POLICE

Respondent

Hearing: 4 December 1984

Counsel: Lawry for Appellant  
Jones for Respondent

Judgment: 4 December 1984

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(ORAL) JUDGMENT OF PRICHARD, J.

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This is an appeal against a conviction on the charge of receiving a step ladder knowing that it had been dishonestly obtained.

In essence, the argument advanced by Mr Lawry for the Appellant is that the learned District Court Judge misdirected himself as to the proof required to sustain a conviction of the offence of receiving.

Knowledge is, of course, an essential element of this offence. But, proof of knowledge is nearly always a matter of inference from the circumstances in which the goods were received, and from the explanation - or lack of explanation - given by the accused when found in

possession of recently stolen goods. The question has to be answered subjectively with reference to the knowledge of the accused himself and knowledge is not, of course, the same thing as mere suspicion. It has to be established that the accused in fact knew that the goods were obtained dishonestly.

The circumstances of this case were that the ladder was left by its owner - an employee of a firm of security guards - on the roof rack of a car parked in Upper Queen Street near the premises occupied by his employers. That was on Saturday 17 March. The ladder was removed by someone from the parked car at about 8 o'clock that evening. On the following day, Sunday 18 March, the Appellant uplifted the ladder from under a hedge or bushes at the rear of a property in St. Benedicts Street which, I understand, can also be approached from Karaka Street. Karaka Street is off Upper Queen Street. The Appellant and a companion were apprehended at the entrance to Karaka Street. They had the ladder on the roof rack of a vehicle.

The explanation which the Appellant gave for his possession of the ladder was that a man named Peter Phillips, for whom he had performed a service the previous day, had approached him in a hotel and offered him a ladder in consideration of services he had rendered in moving Mr Phillips belongings from the apartment house where he had been living.

It is implicit in the judgment of the learned District Court Judge that he disbelieved that explanation. He concluded his judgment by saying:-

"I am of the view that the circumstances were such that he should have been suspicious and in fact did not receive this article reasonably, did receive this article in circumstances that he knew it had been dishonestly obtained."

In part, of course, the question for this Court is whether the circumstances bear the safe inference that the Appellant knew that the ladder had been dishonestly obtained, and in part, it involves a question of credibility. Although the learned District Court Judge did refer to suspicious circumstances, his ultimate conclusion was that the Appellant knew the ladder had been dishonestly obtained.

In my view, the circumstances were such that the learned District Court Judge could properly take that inference from the evidence. It is clear that he did address himself to the question of actual knowledge and it is implicit in his judgment that he disbelieved the explanation given.

In the circumstances, it would be wrong for me to substitute my view for that of the learned District Court Judge and I am bound to reject this appeal. The appeal is dismissed.

*John P. D. J.*