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NZLR X

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M.157/84

874

BETWEEN PAUL

Appellant

A N D THE POLICE

Respondent

Hearing: 15 June 1984

Counsel: M.J. Knowles for Appellant
B.M. Stanaway for Respondent

Judgment: 28 JUN 1984

JUDGMENT OF HARDIE BOYS J.

This is an appeal against conviction on a charge that the appellant "received from person or persons unknown, one pair of Bata Bullets, valued at $22.99, the property of Dowsons Shoes Ltd, before then obtained by a crime, knowing at the time of receiving the same that they had been dishonestly obtained".

The evidence was extremely brief. A police constable was speaking to the appellant about another matter. She had with her a bag containing a pair of Bata Bullet shoes. They were of a kind which the manageress of Dowsons Shoes Ltd identified as being sold in her shop for $22.99 a pair. The shoes, which unfortunately were not produced as an exhibit and so were not available to me, were apparently tied together in some way and the manageress said that to the best of her

knowledge hers was the only shop that displayed this kind of shoe tied together in this way. She did not say that this particular pair of shoes had been stolen from her shop and the District Court Judge very properly concluded that it had not been established that the shoes had been the property of Dowsons Shoes Ltd. But he held that that was not fatal to the prosecution, and there has been no challenge to that.

The only other evidence was that of the police constable, who described what the appellant told her when he asked her where she had obtained the shoes. She claimed that a girl whom she said she could identify only as Maxine had given them to her; that earlier that day Maxine had asked her for her bag which she was going to use for shoplifting; that appellant lent the bag to Maxine on condition that when she received it back there was to be no stolen property in it; that when it was returned the shoes were in it; that she intended to keep the shoes for herself; and that she knew when she obtained them that they must have been stolen. The question raised by the appeal is whether this was sufficient evidence to enable a conviction properly to be entered.

Mr Stanaway acknowledged that consequent upon the decision of the Court of Appeal in R v Anderson [1983] NZLR 509 the Crown on a prosecution for receiving stolen goods may now need to adduce proof beyond reasonable doubt as to three matters: first, that the goods in question had been obtained by a crime; secondly, that the appellant knew that they had

been dishonestly obtained; and thirdly in rebuttal of any inference reasonably open that they may have come into the possession of the person from whom the accused had obtained them by conversion after previous lawful possession. Mr Knowles rightly conceded that the evidence was sufficient to establish the second of these matters, but he argued that it was insufficient to establish either of the other two.

R v Porter [1976] Crim.L.R. 58 and R v Marshall [1977] Crim.L.R. 106, were both cases of alleged receiving of stolen property: in the former an admission by the accused that he believed the goods to have been stolen was held to be insufficient whilst in the latter an admission that the accused had bought the goods from a man who had told him that they had been stolen was also not enough because of the hearsay nature of the later part of the admission.

R v Anderson itself involved a somewhat different point. The only evidence apart from the accused's possession of the goods was first his explanation that he bought them for a nominal sum from a man in a hotel who could not be traced and secondly his admission that he knew that they must have been stolen or "hot". It was held that that evidence was insufficient to support a conviction, because it did not displace the possible inference that the goods had been converted and sold by a dishonest employee or hirer from the owner (whose identity was not known).

Does this mean that a successful prosecution cannot ever be brought where the only evidence is the accused's admission? In Bird v Adams [1972] Crim.L.R. 174 (Divisional Court), Lawson J is reported in the commentary to R v Porter as having said:

> " In many cases it is not possible for those responsible for prosecutions to prove that the goods are in fact stolen goods. It may not be known from what source they emanate but if the person charged has made some statement relating to the circumstances in which he acquired possession of these goods, it is quite legitimate and proper for inferences to be drawn from the evidence of that statement that the goods are in fact stolen. This in fact is a common situation. "

Discussing these English cases in Police v Coward [1976] 2 NZLR 86, 88-89, Roper J drew this distinction:

> " ....it is one thing for an accused to admit facts of which he has personal knowledge, and from which an adverse inference as to other facts can be drawn, but quite a different thing for the accused to 'admit' facts of which he has no personal knowledge. "

Or as Lord Tucker said in delivering the advice of the Privy Council in Surujpaul v Reg [1958] 3 All ER 300, 304:

> " [An accused] can confess as to his own acts, knowledge or intentions, but he cannot 'confess' as to the acts of other persons which he has not seen and of which he can only have knowledge by hearsay. "

I would not regard Porter and Marshall (both cases in the Crown Court) as more than illustrative of this distinction. The words of Lawson J are a warning against rarifying the law to such a degree that the crime of receiving

becomes largely incapable of proof.

The appellant's evidence of what Maxine told her she intended to do is inadmissible as evidence of Maxine's intention, and so cannot be used to lay the basis for an inference that Maxine acted in accordance with that intention. Restricting the availability of the appellant's statement to matters within her own knowledge, we have the fact that she lent her bag to Maxine intending thereby to assist Maxine with some shoplifting, and that the bag came back, and with it the shoes, tied together in a way one shop at least uses for display purposes. The case differs from the others cited in that it contains as an additional element the appellant's own admitted purpose. I think that element is sufficient to warrant Mr Stanaway's submission that there was at least a prima facie case and therefore in considering the inferences properly to be drawn from the facts, regard may be had to the failure of the appellant to give evidence in explanation: Purdie v Maxwell [1960] NZLR 599, 602-3. In my judgment, the District Court Judge was entitled to conclude that the shoes had been dishonestly obtained by Maxine. I do not consider that the facts were such as to require the prosecution to rebut any possible inference of conversion.

The line between what is and what is not sufficient proof may seem fine and perhaps wavering but is I think strengthened by the application of some common sense.

The appeal is dismissed.

Solicitors:

M.J. Knowles, CHRISTCHURCH, for appellant
Crown Solicitor, CHRISTCHURCH, for respondent.