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NZLR

IN THE HIGH COURT OF NEW ZEALAND
GISBORNE REGISTRY

981

M.24/84

BETWEEN: CLIVE RAYMOND CRAWFORD
of Gisborne, Beneficiary

Appellant

A N D: THE POLICE

Respondent

Offence: Receiving (1)
Dealt With: 11 July 1984 At: Gisborne By: Rice, DCJ
Sentence: Imprisonment 6 months

Appeal Hearing: 14 August 1984
Oral Judgment: 14 August 1984

Counsel: J C Mathieson for appellant
C Browne for respondent

Decision: APPEAL DISMISSED

(ORAL) JUDGMENT OF HENRY, J.

This is an appeal against a conviction entered in the District Court at Gisborne on 14 June 1984 in respect of one charge of receiving stolen property knowing it to have been dishonestly obtained.

The property concerned was a quantity of foodstuffs which, it was accepted, was stolen from two trucks owned by Modern Freighters Limited and which had been parked in the car-park outside the DB Gisborne Hotel. The evidence established that the theft occurred some time after 5:00 p.m. on 14 February of this year. The goods concerned, or some of them, were found by the Police on

premises occupied by the appellant. Some of the goods were in two separate freezers, and some were in a bedroom in the house.

The only issue in the District Court was whether there was sufficient proof that the appellant knew the goods were stolen at the time they were in his possession, it being accepted that the other elements of the offence were proven. The goods were located, as I have said, on those premises occupied by the appellant, at about 10:00 a.m., or perhaps a little earlier. When spoken to by the Police and asked where the goods had come from, the appellant said he did not know, that he had arrived home the previous night and had found them in the kitchen. He told the police officer that he thought they had been left there by relatives for his grandfather's funeral. At the hearing in the District Court evidence was given by a Miss Wilson, who apparently resided in the same property occupied by the appellant, to the effect that the goods located there were found in the house when she and the appellant returned to it at about 12:30 a.m. on the morning of 15 February.

On behalf of the appellant it is contended first, that there was no adequate proof of appellant's knowledge that the goods in question had been stolen. The learned District Court Judge drew an inference of knowledge from, he said, all the circumstances, included in which he listed factors. First, that the goods had been very recently stolen - and I have already mentioned the times involved;

second, that the theft probably occurred during the hours of darkness; third, that early on the morning of 15 February 1984 appellant had been seen to be burning material on the property, which appears to have included some carton boxes, the goods in question having apparently originally been stored in the trucks in some form of carton container; fourth, that the appellant's house was situated very close to the car-park at the DB Gisborne Hotel. In my view those factors, taken together, comprised adequate material from which the learned District Court Judge could make the inference of guilty knowledge, which he did.

The second point raised on the appeal is that there was an incorrect application of the doctrine of recent possession. Having made the inference of knowledge to which I have already referred, the learned District Court Judge went on to consider the doctrine of recent possession and to hold that it applied to the circumstances of this case. In my view, there was certainly room for the doctrine to operate as a factor in considering this essential element of guilty knowledge. There is no dispute between the appellant and respondent as to the nature of that doctrine. Here there was an explanation for possession offered by the appellant, which the learned District Court Judge rejected. Again, in my view, he was entitled to reject that explanation as untrue, and the judgment makes it quite clear that in doing so he adopted the correct test which is to be applied -

namely, he addressed himself to the question of whether or not he was satisfied that the explanation was untrue; he held he was so satisfied, and that the explanation could not reasonably be true. He adverted to some factors which he took into account in reaching that conclusion and, in my view, it was open to him to use each of those factors in the way in which he did. The basic position here was that the goods were stolen from a place very close to the appellant's property, were found there, it being contended they had arrived or were certainly there on his return at about 12:30 in the morning, and there was in fact nothing else to indicate from where they may have come. It would have required someone to have had access to the appellant's property, and it is noteworthy that the goods were considerable in quantity and of a type which it would be unusual to expect to have been delivered to somebody's house at that time and in that fashion. In my view, the learned District Court Judge was also entitled to take into account that there was no further evidence for him to consider. It followed, therefore, that I consider the application of the doctrine was open to the learned District Court Judge and that it was properly applied by him.

The third matter raised is that there was a failure by the prosecution to check or negate the explanation which was given to the Police officer. It seems to me that in these particular circumstances there was little, if anything, which could be checked by the Police. I do not understand the authorities in this regard to require an investigating

officer to follow up matters which are not detailed in any adequate way in an explanation given by a suspected person. Further, even if there had been a failure in this regard, I do not consider it could operate to negate a sufficiency of the other evidence relating to proof of this particular element of the charge. I think the true rationale is that the explanation must be such as to raise in the mind of the tribunal hearing the case some reasonable doubt as to this element of guilty knowledge. If, looked at as a whole, taking into account the explanation given, the Court concludes that the element is proven, then it can operate on that evidence accordingly.

The final matter raised on behalf of the appellant relates to a suggestion that the onus of proof was not correctly applied and that by inference the learned District Court Judge was requiring the appellant to prove that his possession was innocent. I have read again the whole of the judgment, and in my view it is clear from a reading of it in its totality that there was a correct direction by the Judge to himself as to the onus of proof, and I am satisfied that he applied it correctly. I do not think any of the passages referred to, such as that expecting the appellant to have produced someone to confirm delivery of the property to his house, demonstrates in any way that this onus was not properly applied.

It follows from what I have said that there are no sufficient grounds made out to interfere with the

conviction, and the appeal is accordingly dismissed.

Solicitors:

Burnard Bull & Co., Gisborne, for appellant

Crown Solicitor, Gisborne, for respondent