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*6 Atwal v Massey

Positive/Neutral Judicial Consideration

Court
Divisional Court

Judgment Date
29 July 1971

Report Citation
(1972) 56 Cr. App. R. 6

[Divisional Court Case]

The Lord Chief Justice , Mr. Justice O'Connor and Mr. Justice Lawson

1971 July 29

Handling Stolen Goods—Mental Element—Subjective Test—Proof that Circumstances would have Put a Reasonable Man on Inquiry Insufficient— Theft Act (1968 (c. 60), s. 22 (1) .

To establish the mental element required to constitute the offence of handling stolen goods, contrary to section 22 (1) of the Theft Act 1968 , it is not sufficient to prove that the goods were received in circumstances which would have put a reasonable man on inquiry. The test is a subjective one. It must be proved that the defendant was aware of the theft, or that he believed the goods to be stolen or that, suspecting them to be stolen, he deliberately shut his eyes to the circumstances.

*7

Case Stated by Warwickshire Justices.

On January 28, 1971, an information was preferred by the prosecutor, Roy Massey, a police officer, against the defendant, Jaswand Singh Atwal, charging him with handling stolen goods contrary to section 22 of the Theft Act , knowing or believing an electric kettle, value £7.80, to be stolen goods. On the hearing of the information at Stratford-upon-Avon Magistrates' Court on February 17, 1971, the following facts were found. The defendant received the kettle and obtained possession of it after it had been stolen by Alan Mott, who had left it by a gate at a road junction for collection by the defendant. The appellant paid Mott for it.

The justices found that, although there were discrepancies in the evidence, the defendant from the circumstances under which he had collected the kettle ought to have known that it was stolen. Accordingly, they found that the case against him was proved, convicted him, and fined him £10 with £15 costs. The defendant appealed to the Divisional Court, and the question for the opinion of the Court was whether the fact that the defendant ought to have known that the kettle had been stolen was sufficient to render him guilty of an offence under section 22 of the Theft Act 1968 .

S. C. Desch for the appellant.

E. M. Hill for the respondent.

The Lord Chief Justice

[after stating the facts]: The whole case reeked with suspicion. The ordinary transaction for the sale of an electric kettle would not have the collection and delivery of goods in this somewhat unusual form, but it was for the justices to decide as a matter of fact whether the appellant at the time when he received the kettle knew that it was stolen or believed it to be stolen and took it dishonestly under the terms of the section.

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The position can be stated quite simply. If when the justices said that the appellant ought to have known that the kettle was stolen they meant that any reasonable man would have *8 realised that it was stolen, then that was not the right test. It is not sufficient to establish an offence under section 22 that the goods were received in circumstances which would have put a reasonable man on his enquiry. The question is a subjective one: was the appellant aware of the theft or did he believe the goods to be stolen or did he, suspecting the goods to be stolen, deliberately shut his eyes to the consequences? It may be that the justices meant the word "ought" to have the second meaning, namely that he suspected but closed his eyes, but we do not think that we ought to speculate on such a possibility, but rather that we ought to deal with the matter on the words used by the justices in the Case.

Counsel for the respondent sensibly recognise that it is too small a case to justify us sending it back for further investigation, and in those circumstances the only alternative is to treat the matter on the footing that the justices were wrong and applied the wrong test, and thus that the appeal should be allowed and the conviction quashed.

O'Connor J.:

I agree.

Lawson J.:

I agree.

Representation

Solicitors: Kemm, Nordon & Co. , agents for Blythe, Owen-George & Co., Leamington Spa , for the appellant; P. R. Kimber , agent for James Gibbs & Co., Stratford-upon-Avon , for the respondent.

Conviction quashed.

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