

ROYAL COURT
(Samedi Division)

78.

24th April, 1995

Before: The Deputy Bailiff, and
Jurats Blampied and Herbert

Police Court Appeal
(The Magistrate)

Richard John MacLean

- v -

The Attorney General

Appeal against conviction in the Police Court on 14th February, 1995, following not guilty pleas to:

2 counts of criminally receiving, hiding, or withholding stolen goods.

Advocate J.C. Gollop for the Appellant.
A.D. Robinson, Esq., Crown Advocate.

JUDGMENT

THE DEPUTY BAILIFF: This appeal turns on a very narrow point. We do not need to set the facts out in any great detail.

5 On 26th November, 1994, at about 5 o'clock in the evening, the appellant was involved in a road traffic accident. He said that he was blinded by the lights of an on-coming car near St. Aubin. His car hit a wall; the front tyre burst. The appellant drove his car some distance and parked it on a car park and was then seen throwing a bundle over the sea wall.

10 He attended at a friend's house to call for a tow truck and a taxi, but he did not call the police. There was a witness to the incident of the object being thrown on to the beach over the sea wall and she did call the police. They found the car and two boxes, one on the beach containing a frozen salmon and three packets of chicken drumsticks. On the sea wall were two loaves of bread and shoes and a shirt were nearby.

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The car was traced to the appellant. He lied to the police, telling them that he had purchased the goods from 'Checkers'.

5 Later a turkey went missing from the firm where the appellant was employed as a supervisor. It was, in fact, an unusually large turkey, which was destined to be sold to the retail trade. It had come from a subsidiary of Le Riches to Channel Island Bakeries, the firm in question, both based at Rue des Près, while the deep-freezers at 'Tradesavers', Plat Douet Road, were being defrosted.

10 The turkeys were called 'Golden Range' turkeys. As we have said they were large, in excess of 20lbs. All this occurred on the weekend of 3rd December.

15 The police went to the appellant's home on 6th December and in his freezer they found a turkey; it was a 'Golden Range' turkey.

20 The appellant told the police that he had purchased the frozen goods, including the turkey, on three separate occasions from a man who had sold them to him from a plastic bin liner in the boot of his truck on the car park at the 'Tivoli Tavern' at Bagot, in daylight, and openly.

25 The first occasion on which he made a purchase was at the beginning of October, the last on 26th November. There had been a number of 'Golden Range' turkeys, that is to say probably more than six, bought by 'Tradesavers', but there was no trace of a record of such turkeys having been sold to anyone. That is not to say that none had been sold.

30 The appellant told the police that he had thrown the articles over the sea wall because he could not be bothered to carry them. He later changed his story to say that he threw them either in a panic or a temper because the boxes fell apart when he was removing them from the boot of his vehicle. The police officer who retrieved them said that they were intact and showed no damage.

40 It is those inconsistencies which in our view allowed the learned Magistrate to exercise his discretion on a submission of no case to answer and to let the trial continue. We cannot fault the learned Magistrate on that.

45 Mr. Gollop chose, once the decision had been made for the trial to continue, to call the appellant. We have no doubt, at that stage, that there were matters which required to be assessed by the learned Magistrate arising from the inconsistent stories told by the appellant.

50 We have no doubt that the French authorities, Le Geyt and Merlin dealing with "receleur" are so consistent with the English

concept that we need not confuse the issue necessarily by switching jurisdictions. We are, however, grateful to counsel for the work that they have undertaken in that regard.

5 The test of knowing or believing goods to be stolen is set out in Archbold: "Criminal Pleading, Evidence and Practice, (1994 Ed'n) at 21-243. The passage reads:

10 *"It must be proved by the prosecution (and the burden of establishing this remains with the Crown throughout), that the defendant, at the material time (when that will depend upon the particular allegation being made - e.g. if the allegation is "receiving", the material time is the time when he received the goods) knew or believed*
15 *the goods to be stolen. - This is proved either directly, by the evidence of the principal offender, which should be corroborated, or circumstantially.*

20 *It is not sufficient to prove that the goods were "handled" in circumstances which would have put a reasonable man on inquiry. A summing up is defective if in effect it leaves the jury with the impression that suspicious circumstances, irrespective of whether the accused himself appreciated they were suspicious, imposed*
25 *a duty as a matter of law to act and inquire, and that a failure to do so was to be treated as knowledge or belief. The question is a subjective one, and it must be proved that the defendant knew, or believed the goods to be stolen."*

30 The appellant has said that he purchased these frozen goods from the back of a transit type van in a car park at the 'Tivoli Tavern' at Georgetown; that is in itself unusual. Mr. Gollop says that many things, such as flowers, are sold in public houses. But
35 the actions of the appellant - his lies to the police; his action in throwing the goods over the wall, unusual in themselves; and his totally inconsistent explanation for doing that - leads us to the conclusion that there was more than sufficient circumstantial evidence to allow the Magistrate to come to the conclusion that he
40 did.

45 There is one other matter and that is that all the items subject to the charge have, at some time or other, been stored at Channel Island Bakeries' deep-freeze facility. It does seem to us
50 extraordinary that a man employed since 1983 as a supervisor would not have been bound to question the fact that these goods -(that is the turkey and the 'Nisa' brand goods); and Mr. Lamy said that they were the first batch of turkeys received from a new range and which possibly had only one other outlet in the Island - did not come, in some way, from his employers.

We are further disturbed by the question and answer that the appellant made under caution on 5th December at Police Headquarters, where he told the police that he was in fact telephoned by a total stranger at his home who invited him to the 'Tivoli' car park. It goes on to say this:

Q: "What did he say"?

A: "I think he told me a price and I had a look and thought that was OK and whether it was stolen or not is irrelevant".

In our view the appellant was fortunate to have been dealt with as he was and the appeal is accordingly dismissed.

Authorities

Merlin: Répertoire de Jurisprudence (5th Ed'n) (Paris, 1828):
pp.253-259.

Archbold: "Criminal Pleading, Evidence and Practice" (1995) paras.
4-305 to 4-308.

Kenny: "Outlines of Criminal Law" (18th Ed'n), 1962, pp.355-358.

Russell on Crime (11th Ed'n), 1958, pp.1297-1310.

R. -v- Havard (1916) 11 CAR 2.

R. -v- Sbarra (1919) 13 CAR 118.

R. -v- Fuschillo [1940] 2 All ER 489.

Les Manuscrits de Philippe Le Geyt, sur la Constitution, les Lois,
et les Usages de cette Ile (1847) Tome III pp.391-394, 412-
414.

Archbold: "Criminal Pleading, Evidence and Practice" (1994) paras.
21-243 and 21-244.

Archbold: "Pleading, Evidence and Practice in Criminal Cases"
(33rd Ed'n), 1954, paras. 1333.1.-1339.