Receiving: s 433 (Before 1 December 2008)

Legislation

433 Receiving tainted property

(1) Any person who receives anything which has been obtained by means of any act constituting an indictable offence, or by means of any act done at a place not in Queensland which if it had been done in Queensland would have constituted an indictable offence and which is an offence under the laws in force in the place where it was done, and has reason to believe the same to have been obtained, is guilty of a crime.

(2) Where the thing so obtained has been —

(a) converted into other property in any manner whatsoever; or

(b) mortgaged or pledged or exchanged for any other property;

any person who, having reason to believe —

(c) that the said property is wholly or in part the property into which the thing so obtained has been converted or for which the same has been mortgaged or pledged or exchanged; and

(d) that the thing so obtained was obtained under such circumstances as to constitute a crime under subsection (1);

receives the whole or any part of the property into which the thing so obtained has been converted or for which the same has been mortgaged or pledged or exchanged, is guilty of a crime within the meaning of subsection (1) and may be indicted and punished accordingly.

(3) If the offence by means of which the thing was obtained is a crime, the offender is liable to imprisonment for 14 years.

(4) If the thing received is a firearm or ammunition, the offender is liable to imprisonment for 14 years.

(5) If the offender received the thing while acting as a pawnbroker or dealer in second hand goods, under a licence or otherwise, the offender is liable to imprisonment for 14 years.

(6) In any other case the offender is liable to imprisonment for 7 years.

(7) For the purpose of proving the receiving of anything it is sufficient to show that the accused person has, either alone or jointly with some other person, had the thing in his or her possession, or has aided in concealing it or disposing of it.

Commentary

For offences committed after 1 December 2008, see Chapter 170.

The words 'had reason to believe' that the property was obtained by means of the commission of an indictable offence, were inserted by Act No. 3 of 1997 and apply in relation to offences occurring on or after 1 July 1997.

For offences committed prior to that date, the prosecution has to prove that the defendant knew that the property had been so obtained. In this case, it would be appropriate to follow the direction given by Gleeson CJ in *Watkins* (unreported, Court of Criminal Appeal NSW, 5 April 1995) which has been adapted below.

See also the direction on recent possession at **No 171 – Recent Possession.**

Suggested Direction

The suggested Direction is based on the usual case where it is alleged that the property received was stolen.

The prosecution must prove beyond a reasonable doubt that:

1. **The defendant received the property.**

   The prosecution can prove that the defendant received the property if it establishes that, either alone or jointly with some other person, the defendant had it in his/her possession [or the defendant aided in concealing it or disposing of it].

   A person possesses something if:

   (a) he or she has it in his or her physical custody; or

   (b) he or she knowingly has it under his or her control.

2. **The property was obtained by means of any act constituting an indictable offence.**

   Property is stolen if it is taken from the owner, without the owner's consent and with an intent to permanently deprive the owner of it.

3. **At the time the defendant received the property he/she had reason to believe that the property was stolen.**

   The defendant's state of mind as to the property being stolen must be more than suspicion, but it does not require the defendant to have actually seen the property being stolen, nor

does it require him/her to know when and by whom the property was stolen.

It is sufficient for the prosecution to prove that the circumstances surrounding the defendant's receipt of the property were such that he/she had reason to believe that the property was stolen.

Mere negligence, or carelessness or even recklessness in not realising that the property was stolen is not enough however if you think that the facts known to the defendant would have put a reasonable man on inquiry that would be a relevant factor when you are considering whether he/she had reason to believe it was stolen.

[Where the offence is committed prior to 1 July 1997, it is appropriate to follow the below direction adapted from the direction given by Gleeson CJ in *Watkins*]:

In my belief the common direction that is presently given on the issue of guilty knowledge in cases of receiving is as follows:

The Crown must prove and prove beyond reasonable doubt that at the time when the defendant received the goods he/she knew that they were stolen or obtained in circumstances amounting to felony. The receipt of stolen goods in circumstances where the person receiving them did not know that the goods were stolen or obtained feloniously does not constitute the crime of receiving. It is an essential feature of the offence that the person receiving the goods knew that they were stolen or feloniously obtained. But if a person believes the goods to be stolen or feloniously obtained at the time when he/she receives them, that is sufficient to constitute the requisite guilty knowledge since belief without actual knowledge is sufficient. The knowledge required to constitute the offence need not be such as would be required if the defendant had actually seen the property stolen.

Indeed, it is not necessary that the defendant knew when or by whom the property was stolen. In order to prove the required knowledge of the defendant it is sufficient if you as judges of the facts think that the circumstances accompanying his/her receipt of the goods were such that they made the defendant believe the goods were stolen goods. Mere negligence or carelessness or even recklessness in not realising that the goods were stolen does not create guilt. The test is not 'Ought the defendant to have realised that they were stolen?' It is 'Did the defendant realise that they were stolen?'

However, if you think that the facts known to the defendant would have put a reasonable person on inquiry, that would be a relevant factor when you are considering whether he/she did not know it. It must be kept in mind that the issue finally for you to determine and the Crown to prove beyond reasonable doubt is 'What did the

defendant believe?' not 'What would the ordinary person have believed?'