

## **Recent Possession**

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The prosecution relies on what it alleges was the recent possession the property by the defendant which the prosecution says is stolen.

Where a defendant is in possession of property which has recently been stolen the jury may – not must – in the absence of any reasonable explanation, draw the inference that he stole the property or received the property.

Before such an inference can be drawn, the prosecution must prove that:

1. The defendant was in possession of the property.

Possession means that he knew it was there and had control over it; and

2. The property had recently been stolen.

There is no rule about what length of time qualifies as recent. It depends on the circumstances generally, and particularly on the nature of the property stolen. If the property stolen is commonplace, the time would be very short. If on the other hand, the thing was uncommon or unusual, the time would be longer.

The defendant must have had an opportunity to give an explanation in circumstances where if he is innocent an explanation might reasonably be expected.

[Those circumstances do not include the situation where a defendant, having been duly cautioned, declines to answer questions by the police, and also does not include his decision not to give or call evidence in his own defence.]

[If the defendant has given an explanation which you accept or think might be true, even though not convinced that it is true, the prosecution has not discharged the onus it has of satisfying you beyond reasonable doubt of the guilt of the defendant.]

The explanation having been given, it is for the jury to say on the whole of the evidence whether the defendant is guilty or not guilty.

The burden of proof on this issue, lies on the prosecution.

In *Bruce v The Queen*<sup>1</sup>, the High Court (Mason CJ, Brennan, Deane, Dawson and Gaudron JJ) said:

*“Where an accused person is in possession of property which is recently stolen, the jury is entitled to infer as a matter of fact, in the absence of any reasonable explanation, guilty knowledge on the part of the accused. Such an inference will be drawn from the unexplained fact of possession of such property and not from any admission of guilt arising from the failure to proffer an explanation. It is the possession of recently stolen property in the absence of explanation or explanatory circumstances, which enables the inference to be drawn. Thus the absence of any reasonable explanation must not itself be explicable in a manner consistent with innocence.”*

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<sup>1</sup> [\(1987\) 74 ALR 219](#).