

THE HIGH COURT

[2012 No. 2146 SS]

**IN THE MATTER OF SECTION 52 OF THE
COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961**

BETWEEN/

**DIRECTOR OF PUBLIC PROSECUTIONS
(AT THE SUIT OF GARDA SUSAN MULCAHY)**

PROSECUTOR

AND

SARAH JOHNSTON AND DEAN GIBBONS

ACCUSED

JUDGMENT of Mr. Justice Hogan delivered on the 5th day of March, 2014

1. In a prosecution for theft under s. 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001, is it necessary that the charge sheet should precisely set out the name of the corporate owner of the goods in question? Or does it suffice if the charge sheet uses the informal name by which the corporate entity is commonly or popularly known? These, in essence, are the questions that have been posed by District Judge Halpin in this case-stated at the request of the two accused in this case, Sarah Johnston and Dean Gibbons.
2. Both accused are presently before the Tallaght District Court faced with the charge that on 10th July, 2012, at Level 2, The Square, Tallaght, Dublin 24 they stole cosmetics to the value of the sum of €195.00, the property of "The Manager, Boots, Level 2, The Square, Tallaght, Dublin 24", contrary to s. 4 of the 2001 Act.
3. At the hearing before the District Court evidence for the prosecution was given first by a security officer who said that he had seen the two defendants acting suspiciously on the shop floor, and that both of them had taken items from the shelf and concealed them in their clothes. The officer further stated that both of them left the store and passed the point of payment without paying for the goods. He also said that he had pursued the two individuals and brought them back to the store and all of the property was recovered. He further gave evidence that neither accused had any right to take the property and no consent was given to them. He did, however, confirm that he was not an employee of Boots and was, in fact, an employee of a separate security company.
4. The prosecution then called a manager from Boots, a Ms. Mary Shun. Ms. Shun gave evidence that she was a manager in the Boots store and had responsibility for, amongst other things, stock. She confirmed that no permission had been given to either accused to take the stock that was taken from the store. Ms. Shun then tendered a certificate of incorporation of the company, Boots Retail (Ireland) Ltd, dated 5th November, 2002. In cross examination Ms. Shun accepted that the company name on the certificate of incorporation was different to that contained in the charge sheet, but she said that it was the same company.
5. Following the close of the prosecution case the defence sought a direction, mainly based on the fact that the Boots name on the charge sheet varied slightly from the company name as set out on the certificate of incorporation. Having considered the matter, District Judge Halpin refused to grant direction and he stated that the purpose of the charge sheet was to set out the charge and the offence in ordinary language with reasonable clarity and that no more is, or should be expected. He took the view that the charge was clearly and fairly described in the charge sheet and that no issue arose on that ground.
6. District Judge Halpin rejected the argument of the defence that no proof of ownership of the property had been given. The judge pointed to the evidence of the security officer that the two accused had left the point of payment without paying for the goods and the property had been recovered when the accused were brought back to the store. He further stated that this evidence was corroborated by Ms. Shun, who gave evidence as to the ownership of the property that was ultimately recovered. He took the view that the two accused clearly had a case to answer. Finally, following a submission from counsel concerning the implications of the decision of Birmingham J. in *Director of Public Prosecutions (Breen) v. Valentine* [2009] 4 I.R. 33, District Judge Halpin agreed to state a case to the opinion of this Court. It should be said that the Case Stated sets out the relevant facts and legal issues arising with admirable clarity.
7. The District Court accordingly posed three questions as follows:

Question 1

Must the charge sheet contain the company's name precisely in the terms as set out in the certificate of incorporation and is a departure from such, in the absence of a pre-hearing amendment, fatal to the prosecution case?

Question 2

In the alternative, in the case of theft, if the owner of the property as described in the charge sheet preferring the charge is different to that of the owner giving evidence at the trial is the District Court judge obliged to strike out the proceedings notwithstanding that such deficiency was addressed in evidence?

Question 3

If an accused is charged with stealing property from a particular legal entity and the evidence tendered in the case discloses that of a different legal entity is that fatal to the prosecution case even if there *is prima facie* evidence of the other ingredients of the offence alleged in the particular circumstances where there has been no application to amend the charge sheet and the accused pleaded 'not guilty' to the charge as alleged."

8. We may now proceed to examine the three questions which essentially ask whether the charge sheet must refer to the formal title of the company or whether it will suffice if the charge sheet reflects the name by which the corporate entity is general known.

Relevant legislation

9. Section 4(1) of the 2001 Act provides that:-

"Subject to section 5, a person is guilty of theft if he or she dishonestly appropriates property without the consent of its owner and with the intention of depriving its owner of it."

10. Section 2(1) of the 2001 Act further provides that the terms "owner" and "ownership" in relation to the property have the meanings given to them by s. 2(4):-

"a person shall be regarded as owning property if he or she has possession or control of it, or has in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest)..."

The decision in *Valentine* and its implications

11. An issue similar to that arising in the present case also arose in *Valentine*. In that case the evidence had been that the stolen items had been taken from a retail outlet known as "Texas Homebase", but in his judgment Birmingham J. was at pains to stress that no evidence at all had been given of the existence of "Texas Homebase" as a legal person or that "Texas Homebase" was the owner of the stolen articles.

12. Birmingham J. then stated ([2009] 4 I.R. 33, 37):

"It is clear from the authorities that the production of a certificate of incorporation is not an absolute requirement. Rather what is required is evidence to show that the company carried on business in fact as such a company....So far as the obligation to prove the property was owned and that the appropriation was without the owner's consent it is the case of course that from time to time there may be difficulties in establishing an owner, the pickpocket in the crowded street being an obvious example and there the jury or judge will have to consider whether the evidence is such that the property in question is proved to be owned by the person unknown and that an absence of consent can be inferred.

Here, though, the charge was laid as the property of "Texas Homebase" and the identical formula appears in the warrant of execution that issued consequent to the conviction. No information whatever was laid before the court in relation to the nature of the entity referred to or even as to its existence. Given the manner in which the charge was laid I am of the view that the judge was not correct to convict and in these circumstances I would answer the question posed by the learned judge of the District Court in the negative."

13. It is clear that the facts of *Valentine* were special in that *no evidence at all* had been given as to ownership of the goods in question or, indeed, the existence of the corporate entity bearing that name, whether formally or informally doing so. That, however, is not the case here, as Ms. Shun not only produced a certificate of incorporation of the formal title of the company (namely, Boots Retail (Ireland) Ltd.), but she also confirmed that the reference to "Boots, Level 2, The Square, Tallaght, Dublin 24" was a reference to the same company. Ms. Shun further gave evidence that the articles were the property of the company in question.

14. In these circumstances, it is all too plain that the company is the owner of the articles in question for the purposes of both s. 2 and s. 4 of the 2001 Act. In this regard, the fact that Ms. Shun may not have been actually working on the day in question is quite irrelevant, as she was in a position to confirm that the articles were the property of the company. This is quite sufficient for the purposes of the definition of owner in s. 2 and s. 4 of the 2001 Act. All of this stands in marked contrast to the paucity of evidence on these vital questions in *Valentine*.

15. Nor do I think that any complaint of substance can be made in respect of the difference between the name of the company as used in the charge sheet and the formal title of the company as confirmed by the evidence of Ms. Shun. Although this case was tried summarily, the provisions of s. 4(1) of the Criminal Justice (Administration) Act 1924 ("the 1924 Act") may nonetheless be applied (if only by analogy) when assessing the adequacy of the details contained in the charge sheet in the present case. Section 4(1) of the 1924 Act provides:

"Every indictment shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charges."

16. There is no question but that the information given in the charge sheet as to the owner in the present case amply confirmed to the requirements of s. 4(1) of the 1924 Act. It gave the informal and trading title of the company and it was the name by which the company is popularly known and described.

17. Indeed, if anything, the informal title – Boots, Level 2, The Square – probably conveyed more to the accused than any reference to the formal title of the company along with its registered office might have done. While the formal and informal titles in the present case overlapped in respect of the well known pharmacy chain, Boots, it is by no means uncommon for the trading name of the company to diverge considerably from the formal title of the incorporated entity which in strictness owns the goods in question. At all events, in the present case there was no possible prejudice arising from the use of the informal name of the company, precisely because in the words of s. 4(1) of the 1924 Act, "reasonable information" as to the nature of the charges was given in the charge sheet by using the name which the owner of the goods was popularly or commonly known.

Conclusions

18. In these circumstances, I would accordingly answer the questions posed in the Case Stated as follows:

Question 1:

It is not necessary that the charge sheet should contain precisely the same name as that set out in the certificate of incorporation of any corporate entity, provided that the name actually used in the charge sheet provides reasonable information of the identity of the owner and is not otherwise misleading.

Question 2

No, provided that the information given in the charge sheet provides reasonable information as to the identity of the owner.

Question 3

No, provided that the information given in the charge sheet provides reasonable information as to the identity of the owner.