

39/77

SUPREME COURT OF VICTORIA

EASTAUGH & GIBBS v WEINERT

Dunn J — 22 October 1976

CRIMINAL LAW – THEFT OF MOTOR CAR – APPROPRIATION – VEHICLE SEEN TO BE DRIVEN BY DEFENDANT 30 MINUTES AFTER HAVING BEEN TAKEN – ASSUMPTION OF RIGHTS OF OWNER – USE WITHOUT CONSENT – CONCLUSIVE EVIDENCE OF INTENTION TO PERMANENTLY DEPRIVE – DOCTRINE OF RECENT POSSESSION APPLICABLE – *PRIMA FACIE* CASE AGAINST DEFENDANT – NO CASE SUBMISSION UPHOLD BY MAGISTRATE – WHETHER MAGISTRATE IN ERROR: *CRIMES ACT 1958*, s73(14).

On a charge of stealing a motor car, the Magistrate upheld a submission at the close of the informant's case there was no case to answer on the ground there was no evidence that the defendant had in fact taken the motor car or precisely when it was taken, and therefore the prosecution did not come to the point that the defendant had a case to answer. Upon Order Nisi to Review—

HELD: Order absolute.

1. In the circumstances, there was certainly evidence based on the provisions that exist in s73 of the *Crimes Act*, in particular sub-sections 4 and 14, upon which the Magistrate in the absence of any further evidence should properly have convicted the defendant of stealing the motor car.

2. It would also have been open to him on the doctrine of recent possession to have found that the defendant had stolen the motor car and, indeed, he would not have been justified because of that doctrine of saying that there was no evidence creating a *prima facie* case against the defendant.

DUNN J: I should say that the defendant has not appeared on the return of this order nisi and there is no conflict before me as to what had in fact occurred before the learned Stipendiary Magistrate. As to the submission that there was no case to answer, there was no contradiction to the evidence that was then before him relating to this matter. That evidence showed that sometime on the day of the 27th February, before 8.30 pm. in the evening the motor car in question had been taken from outside the premises of 476 Motors Pty Ltd in Elizabeth Street. It was last seen there by a Mr Mair, an employee of the company, at 8.30 pm. At about 9 o'clock the defendant was seen to be driving the car in Elizabeth Street by two members of the police force, the Informants Policewoman Eastaugh and Policewoman Gibbs, and they followed the defendant and eventually apprehended him in possession of the motor car after he turned from Elizabeth Street into A'Beckett Street.

In the circumstances, there was certainly evidence based on the provisions that now exist in s73 of the *Crimes Act*, in particular sub-sections 4 and 14, upon which the Magistrate in the absence of any further evidence should properly have convicted the defendant of stealing the motor car. Of course, the presence of further evidence might in fact alter the situation. It would also have been open to him on the doctrine of recent possession to have found that the defendant had stolen the motor car and, indeed, he would not have been justified because of that doctrine of saying that there was no evidence creating a *prima facie* case against the defendant. For these reasons, the order nisi will be made absolute.