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## COURT OF APPEAL (ENGLAND) — CRIMINAL DIVISION

**R v KANWAR**

Dunn LJ, Cantley &amp; Sheldon JJ

2, 8 March 1982

[1982] 1 WLR 845; [1982] 2 All ER 528; 75 Cr App R 87; [1982] Crim LR 532

**CRIMINAL LAW – HANDLING STOLEN GOODS – ASSISTING IN THEIR RETENTION – WIFE USING STOLEN GOODS BROUGHT HOME BY HUSBAND – WIFE MAKING VERBAL REPRESENTATIONS TO POLICE SEARCHING HOUSE THAT GOODS NOT STOLEN IN ORDER TO PROTECT HUSBAND – WHETHER USE OF STOLEN GOODS CONSTITUTED ASSISTING IN THEIR RETENTION – WHETHER VERBAL REPRESENTATIONS AMOUNTING TO 'ASSISTING' IN RETENTION OF GOODS: THEFT ACT 1968, S22(1) (ENG) – SIMILAR TO S88 THEFT ACT 1973 (VIC.).**

The appellant's husband brought home some stolen goods which the appellant, who knew they were stolen, used to furnish the house. When the police searched the house the appellant told them there were no stolen goods in the house and, in answer to questions regarding specific articles in the house, lied to the police by saying that she had purchased the articles. The appellant was charged with handling stolen goods by dishonestly assisting in their retention for the benefit of another (her husband), contrary to s22(1) of the *Theft Act* 1968. She did not give evidence at her trial and the police evidence of what she had said during the search was uncontradicted. The judge directed the jury that if they were satisfied that the appellant had actively assisted her husband to keep the goods by using them herself in the house she was guilty of the offence charged. The jury found the appellant guilty and she was convicted. Upon appeal—

**HELD: On the true construction of s22(1) of the 1968 Act, merely using stolen goods in the possession of another could not constitute the offence of assisting in their retention, because to constitute that offence the offender had to do something intentionally and dishonestly in order to enable the stolen goods to be retained, such as concealing them. Accordingly, the judge had misdirected the jury. However, to constitute the offence the requisite assistance did not have to be physical assistance: verbal representations dishonestly made for the benefit of another to conceal that goods were stolen, even if unsuccessful, could constitute assisting in the retention of the stolen goods. It followed that, since there was uncontradicted evidence that the appellant had dishonestly represented to the police that the goods were not stolen goods in order to protect her husband, the offence charged had been established and therefore, despite the judge's misdirection, there had been no miscarriage of justice. The appeal would therefore be dismissed.**

[Notes: For handling stolen goods, see 11 *Halsbury's Laws* (4th ed.) para 1289 and for cases on the subject, see 15 Digest (Reissue) 1362-3, 11,900-1,904. For the *Theft Act* 1968, s22, see 8 *Halsbury's Statutes* (3rd ed) 796.]

**CANTLEY J:** [read the judgment of the court] ... The appellant arrived during the search of the matrimonial home and was told of the object of the search. She replied: 'There's no stolen property here.' She was subsequently asked a number of questions with regard to specific articles which were in the house and in reply to those questions, she gave answers which were lies. It is sufficient for present purposes to take two examples. She was asked about a painting which was in the living room and she replied: 'I bought it from a shop. I have a receipt.' The officer said: 'That's not true.' She said: 'yes, I have.' He said: 'If you can find a receipt, please have a look.' She made some pretence of looking for the receipt but none was produced and ultimately she at least tacitly admitted there was none. The painting is one of the articles in the particulars to Count 9.

She was also asked about a mirror which was in the kitchen. This is one of the articles in the particulars to count 7. The officer said: 'What about the mirror?' She said: 'I bought it from the market.' The officer asked: 'When?' She said: 'Sometime last year.' There is no dispute that that answer was a lie as was the answer about the painting. Later on, she was warned that she was telling lies and that the property was stolen. She said: 'No, it isn't. We're trying to build up a nice home'. Ultimately, although the officer had had no intention of arresting her when he came to the house, he did arrest her and she was subsequently charged. The appellant did not give

evidence and the evidence of the police officer stood uncontradicted,

In *R v Thornhill*, unrep, 15 May 1981, and in *R v Sanders*, The Times 1 March 1982 decided in this court on 25 February 1982, it was held that merely using stolen goods in the possession of another does not constitute the offence of assisting in their retention. To constitute the offence, something must be done by the offender, and done intentionally and dishonestly, for the purpose of enabling the goods to be retained. Examples of such conduct are concealing or helping to conceal the goods, or doing something to make them more difficult to find or to identify. Such conduct must be done knowing or believing the goods to be stolen and done dishonestly and for the benefit of another. We see no reason why the requisite assistance should be restricted to physical acts. Verbal representations, whether oral or in writing, for the purpose of concealing the identity of stolen goods may, if made dishonestly and for the benefit of another, amount to handling stolen goods by assisting in their retention within the meaning of s22 of the *Theft Act 1968*.

The requisite assistance need not be successful in its object. It would be absurd if a person dishonestly concealing stolen goods for the benefit of a receiver could establish a defence by showing that he was caught in the act. In the present case, if, while the police were in one part of the house, the appellant, in order to conceal the painting had put it under a mattress in the bedroom, it would not alter the nature of her conduct that the police subsequently looked under the mattress and found the picture because they expected to find it there or that they caught her in the act of putting it there.

The appellant told these lies to the police to persuade them that the picture and the mirror were not the stolen property which they had come to take away but were her lawful property which she had bought. If that was true, the articles should be left in the house. She was, of course, telling these lies to protect her husband, who had dishonestly brought the articles there but, in our view, she was nonetheless, at the time, dishonestly assisting in the retention of the stolen articles.

In his summing up, the judge directed the jury as follows:

"It would be quite wrong for you to convict this lady if all she did was to watch her husband bring goods into the house, even if she knew or believed that they were stolen goods because, no doubt, you would say to yourselves, "What would she be expected to do about it?" Well, what the Crown say is that she knew or believed them to be stolen and that she was a knowing and willing party to their being kept in that house in those circumstances. The reason the Crown say that, and we shall be coming to the evidence, is that when questioned about a certain number of items, (the appellant) gave answers which the Crown say were not true and that she could not possibly have believed to be true and that she knew perfectly well were untruthful. So, say the prosecution, she was not just an acquiescent wife who could not do much about it, she was, by her conduct in trying to put the police officers as best she could off the scent, demonstrating that she was a willing and knowing party to those things being there and that she was trying to account for them. Well, it will be for you to say, but you must be satisfied before you can convict her on either of these counts, not only that she knew or believed the goods to be stolen, but that she actively assisted her husband in keeping them there; not by just passive acquiescence in the sense of saying, "What can I do about it?" but in the sense of saying, "How nice to have these things in our home, although they are stolen goods".

In so far as this direction suggests that the appellant would be guilty of the offence if she was merely willing for the goods to be kept and used in the house and was thinking that it was nice to have them there, although they were stolen goods, it is a misdirection. We have considered whether on that account the conviction ought to be quashed. However, the offence was established by the uncontradicted evidence of the police officer which, looked at in full, clearly shows that in order to mislead the officer who had come to take away the stolen goods, she misrepresented the identity of the goods which she knew or believed to be stolen. We are satisfied that no miscarriage of justice has occurred and the appeal is accordingly dismissed.