41/83

HOUSE OF LORDS

R v BLOXHAM

Lord Diplock, Lord Scarman, Lord Bridge of Harwich and Lord Brandon of Oakbrook

14 January, 11 February 1982

[1983] 1 AC 109; [1982] 1 All ER 582; [1982] 2 WLR 392

CRIMINAL LAW – HANDLING STOLEN GOODS – "REALISATION BY OR FOR THE BENEFIT OF ANOTHER PERSON" – INNOCENT PURCHASE OF STOLEN GOODS BY SALE – WHETHER "FOR THE BENEFIT OF" BUYER.

In January 1977, O. purchased a motor car for 1,300 pounds (sterling) not knowing that it had been stolen. He paid the seller 500 pounds in cash and was to pay the balance when the seller produced the car's registration documents, but this event never happened. By May 1977 B. suspected that the car had been stolen; nevertheless, in December 1977, he sold it for 200 pounds to a person who was prepared to take the car without any registration documents. Subsequently, B. was charged with handling stolen goods in that he had dishonestly undertaken or assisted in the disposal or realisation of the vehicle "by or for the benefit of" the unknown purchaser. The trial judge rejected a submission that the charge did not reveal an offence known to the law, and ruled that the realisation was for the benefit of the unknown buyer. Thereupon, B. pleaded guilty and was convicted. His appeal against the conviction was dismissed by the Court of Appeal. On appeal by B—

HELD: Appeal allowed.
(1) The offence of dishonestly undertaking in the disposal or realisation of goods by or <u>for the benefit of</u> another person can be committed in one or other of two ways namely
(a) the offender might himself undertake the activity for the benefit of another person; or
(b) the activity may be undertaken <u>by</u> another, assisted by the offender.

(2) A purchaser of stolen goods could not be "another person" within the sub-section, since his act of purchase could not sensibly be described as a disposal or realisation of the goods <u>by</u> him; and although the sale to him could be described as a disposal or realisation for his benefit, the transaction was not within the sub-section.

LORD BRIDGE of HARWICH (with whom Lord Diplock, Lord Scarman and Lord Brandon of Oakbrook agreed) *[set out with the facts and continued]:* … **[113]** The present appeal is brought by leave of your Lordships' House. The full text of section 22(1) of the *Theft Act* 1968 reads:

> "A person handles stolen goods, if (otherwise than in the course of the stealing) knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so."

It is, I think, now well settled that this sub-section creates two distinct offences, but no more than two. The first is equivalent to the old offence of receiving under section 55 of the *Larceny Act* 1916. The second is a new offence designed to remedy defects in the old law and can be committed in any of the various ways indicated by the words from "undertakes" to the end of the sub-section. It follows that the new offence may and should be charged in a single count embodying in the particulars as much of the relevant language of the sub-section, including alternatives, as may be appropriate to the circumstances of the particular case, and that such a count will not be bad for duplicity. It was held by Geoffrey Lane J delivering the judgment of the Court of Appeal in *R v Willis* (1972) 1 WLR 1605, and approved by the Court of Appeal in *R v Deakin* [1972] 3 All ER 803; (1972) 1 WLR 1618. So for as I am aware, this practice has been generally followed ever since.

The critical words to be construed are "undertakes… their … disposal or realisation … for the benefit of another person." Considering these words first in isolation, it seems to me that, if A sells his own goods to B, it is a somewhat strained use of language to describe this as a disposal or

realisation of the goods for the benefit of B. True it is that B obtains a benefit from the transaction, but it is surely more natural to say that the disposal or realisation is for A's benefit than for B's. It is the purchase, not the sale, that is for the benefit of B. It is only when A is selling as an agent for a third party C that it would be entirely natural to describe the sale as a disposal or realisation for the benefit of another person. But the words cannot, of course, be construed in isolation. They must be construed in their context, bearing in mind, as I have pointed out, that the second half of the sub-section creates a single offence which can be committed in various ways. I can ignore for present purposes the concluding words "or if he arranges to do so," which throw no light on the point at issue. The preceding words contemplate four activities (retention, removal, disposal, realisation). The offence can be committed in relation to any one of these activities in one or other of two ways.

First, the offender may himself undertake the activity for the benefit of another person. Secondly, the activity may be undertaken by another person and the offender may assist him, of course, if the thief or an original receiver and his friend act together in, say, removing the stolen goods, the friend may be committing **[114]** the offence in both ways. But this does not invalidate the analysis and if the analysis holds good, it must follow, I think, that the category of other persons contemplated by the sub-section is subject to the same limitations in whichever way the offence is committed. Accordingly, a purchaser, as such, of stolen goods, cannot, in my opinion, "be another person" within the subsection, since his act of purchase could not sensibly be described as a disposal or realisation of the stolen goods by him. Equally, therefore, even if the sale to him could be described as a disposal or realisation for his benefit, the transaction is not, in my view, within the ambit of the sub-section.

In forming this opinion I have not overlooked that in *R v Deaking* [1972] 3 All ER 803; (1972) 1 WLR 1618, 1624, Phillimore LJ said of the appellant, a purchaser of stolen goods who was clearly guilty of an offence under the first half of section 22(1) but had only been charged under the second half, that he was "involved in the realisation." If he meant to say that a purchase of goods is a realisation of those goods by the purchaser, I must express my respectful disagreement.

If the foregoing considerations do not resolve the issue of construction in favour of the appellant, at least they are, I believe sufficient to demonstrate that there is in ambiguity. Conversely it is no doubt right to recognise that the words to he construed are capable of the meaning which commended itself to the learned trial judge and to the Court of Appeal. In these circumstances it is proper to test the question whether the opinion I have expressed in favour of a limited construction of the phrase "for the benefit of another person" is to be preferred to the broader meaning adopted by the Courts below, by any available aids to construction apt for the resolution of statutory ambiguities.

As a general rule, ambiguities in a criminal statute are to be resolved in favour of the subject, sc. in favour of the narrower rather than the wider operation of an ambiguous penal provision. But here there are, in my opinion, more specific and weightier indications which point in the same direction as the general rule.

First, it is significant that the *Theft Act* 1968, notwithstanding the wide ambit of the definition of theft provided by sections 1 and 3(1), specifically protects the innocent purchaser of goods who subsequently discovers that they were stolen, by section 3(2) which provides:

> "Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of rights which he believed himself to be acquiring shall, by reason of any defect in the transferor's title, amount to theft of the property."

It follows that, though some might think that in this situation honesty would require the purchaser, once he knew the goods were stolen, to seek out the true owner and return them, the criminal law allows him to retain them with impunity for his own benefit. It hardly seems consistent with this that, if he deals with them for the benefit of a third party in some way that falls within the ambit of the activities referred to in the second half of section 22(1), he risks prosecution for handling which carries a heavier maximum penalty (14 years) than theft (10 years).

The force of this consideration is not in my view, significantly weakened by the possibility

that the innocent **[115]** purchaser of stolen goods who sells them after learning they were stolen may commit. The quite distinct offence of obtaining by deception (if he represents that he has a good title) or conceivably, of aiding and abetting the commission by the purchaser of the offence of handling by receiving (if both know the goods were stolen). Secondly it is clear that the words in parenthesis in section 22(1) "otherwise than in the course of the stealing" were designed to avoid subjecting thieves, in the ordinary course, to the heavier penalty provided for handlers. But most thieves realise the goods they have stolen by disposing of them to third parties. If the judge and the Court of Appeal were right, all such thieves are liable to prosecution as principals both for theft and for handling under the second half of section 22(1).

Finally we have the benefit of the report of the Criminal Law Revision Committee, 8th Report, *Theft and Related Offences* (1966) (Cmnd 2977), which led to the passing of the *Theft Act* 1968 including the provisions presently under consideration in the same form as they appeared in the draft Bill annexed to the report, to assist us in ascertaining what was the mischief which the Act, and in particular the new offence created by section 22(1), was intended to cure. We are entitled to consider the report for this purpose to assist us in resolving any ambiguity, though we are not, of course, entitled to take account of what the committee thought their draft bill meant: *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg* AG [1975] UKHL 2; [1975] AC 591; [1975] 1 All ER 810; [1975] 2 WLR 513 .

There is a long section in the report headed "Handling Stolen Goods, etc." from paragraphs 126-144. The committee, after drawing attention to the limitations of the existing offence of receiving, say in paragraph 127:

> "we are in favour of extending the scope of the offence to certain other kinds of meddling with stolen property. This is because the object should be to combat theft by making it more difficult and less profitable to dispose of stolen property. Since thieves may he helped not only by buying the property but also in other ways such as facilitating its disposal, it seems right that the offence should extend to these kinds of assistance."

This gives a general indication of the mischief aimed at. The ensuing paragraphs, after setting out the proposed new provision in the terms which now appear in section 22(1) of the Act, give numerous illustrations of the activities contemplated as proper to attract the same criminal sanction as that previously attaching to the old offence of receiving. Throughout these paragraphs there is no hint that a situation in any way approximating to the circumstances of the instant case lay within the target area of the mischief which the committee intended their new provision to hit.

For these reasons I have reached the conclusion that any ambiguity in the relevant language of section 22(1) should be resolved in favour of the narrower meaning suggested earlier in this opinion. I would accordingly answer the certified question in the negative and allow the appeal. The costs of both parties should be paid out of central funds.
