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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

ON 13TH AUGUST 1993

SCA 183/92

TONY ALLEN WRIGHT

V

REGINA

Mr. A. S. McField for the appellant
Mrs. J. Banks for the respondent

HARRE C.J. **JUDGMENT**

Tony Allen Wright appealed against conviction on the general ground that he was not guilty of the offence of handling stolen goods.

On his behalf his attorney, Mr. McField, argued the following facts -

1. That the particulars of the offence specified the wrong section of the Penal Code. That is indeed so. However, the point was not taken in the Court below, when Mr. McField also appeared and the record shows that no one was misled and no injustice ensued. The point seems not even to have been noticed. The charge contained the necessary statement of the specific offence with which the appellant was charged together with such particulars as were necessary for giving reasonable information as to the nature of the offence alleged and the acts or omissions alleged to have given rise to it.
2. As for those particulars, it was submitted that the charge should have specified which of the ways in which the appellant might be found guilty of handling was alleged, that is to say whether he dishonestly received the goods or dishonestly undertook or assisted in their retention, removal, disposal or realisation by or for the benefit of another person, or arranged to do so.

With regard to that, I refer to a citation of a 1977 English Court of

Appeal case R v Nicklin, in paragraph 21 - 224 on page 2442 of the 1992 Edition of Archbold which expresses the relevant principle Stephenson LJ there said this -

> "An indictment which alleges an offence of handling simpliciter unparticularised is not a defective indictment, although that was so stated in one case, and convictions of a particular type of handling can be upheld where allowing the charge in that generalised form has led to no injustice or confusion; but the better practice is to particularise the form of handling for which the defendant is blamed."

The charge was, in my view, expressed in sufficiently specific terms, and in accordance with that principle.

The third matter of procedure to which I need to refer before going on to the facts of this matter relates to the submission that the judgment of the learned magistrate was defective in that he did not give reasons for his decision. It was said that the case of Kimberly Van der Bol (SCA 22/93) was authority for the proposition that this was fatal to the conviction. I do not think that the principle can be expressed so widely. In Van der Bol the learned judge was not satisfied that no substantial miscarriage of justice had occurred and indeed the Crown did not seek to support the conviction. The principle, in my judgment, is this, and the Court expressed it in R v Adam Rankine (169/91 -

> "The lack of any record of a judgment in the present case requires the court to consider the evidence as a whole and determine whether the defect could have resulted in a substantial miscarriage of justice. It is only that circumstance which renders the defect fatal to a conviction."

I merely state the principle at this stage but I shall be looking at the judgment in the case now under appeal later. But first I must look at the evidence.

The relevant facts alleged are simple. They are that in the early hours of 16th October 1992 a cassette recorder was stolen from the Pines Retirement Home. A person was swiftly apprehended and charged with burglary. In the afternoon of the same day, this man - who is

apparently known to the appellant by the name of "Manager" - took police officers to a shack in which the appellant was found lying on a bed with the recorder playing. The shack was not his home, and there were others there also. The recorder was never formally identified as the one stolen, but the lady who was on duty at the Pines and who first noticed tht it was missing was relieved of the necessity of attending court by agreement of both sides, and on the assurance by the Crown that she could identify the machine. That was not an issue at the trial.

The appellant gave an interview under caution which was read into evidence. In that interview he said that "Manager" had come to the shack with the stereo the previous day and had said that he got it from his grandmother and was selling it for $50. He, the appellant, knew "Manager" and did not, he said, expect him to have a stolen tape. He did not buy it, but he gave "Manager" some food and told "Manager" that he was going to do so for $25. "Manager" left the machine in the shack. The appellant said that he did not think it was stolen because Manager told him he got it from his grandmother and she had had it for a long time.

On the element of possession the following exchange took place in the interview under caution at Central Police Station -

Q. "Now when I tried to arrest you in the shack you refused to come with me. Why?

A. Because everybody was in possession of the tape deck.

Q: I take it that by everybody you mean the two girls and the boy who were with you in the shack.

A. Yeah. I was sleeping. I wasn't responsible for the man's things. I wasn't responsible for the stereo because I did not bought it. You should have arrested the other people in the room as well."

But previously in the interview he had said -

"I just gave him food. I was planning on buying

it. But I didn't give him any money. He left it with me though.
Q. He left the stereo with you.
A. Yes Sir."

By the time he was cross-examined he had changed his position -

Q: "Mr. Wright, a stereo like that, didn't you think it strange that a man would just leave it with you just like that without even receiving payment for it?

A: He just leave it in the shack there, because mostly everybody used to be around the back there listening to this tape deck and nobody knew who it came from.

Q: But you knew?

A: I knew, yes, ma'am.

Q: Why didn't you tell him to take it, you didn't want it?

A: I didn't know it was stolen.

Q: No, but you said he just left it there. If you didn't want it why didn't you tell him to take it?

A: He like leave it in the shack, but I decide to sleep there the morning. So I tell him say if he come back in the morning, if he still have it, I would have bought it from him."

In my view the magistrate was right in finding that "Manager" left the stolen tape deck with the appellant, with whom he had been discussing its sale, and that the appellant was in possession. He received the stolen item. It is not to be believed that it was simply left lying around in the shack without any such arrangement. But did he know or believe it to have been stolen? It is at this point that I shall look briefly at the judgment of the learned magistrate. It was criticized because he referred to the tape deck being in the appellant's "room"; and that his approach put the onus of proof upon the appellant; that it was wrong to say "he himself says he is

guilty." But the words following that observation were these - "He knew the man was a thief, knew the man wasn't working, and he said he didn't trust the man. So it was belief. So although he didn't know, it was quite clear he had it in his possession, believing that it was stolen." The reasons for the magistrate's conclusion are sufficiently clear from his judgment. That conclusion is consistent with the evidence and the appeal against conviction is dismissed. In the light of the appellant's record the appropriateness of the sentence was not challenged.

G. E. Harre

16th August 1993.