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Criminal Law--Receiving Stolen Goods--Knowledge Element--Variances Between Indictment and Instruction

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CRIMINAL LAW — RECEIVING STOLEN GOODS — KNOWLEDGE ELEMENT — VARIANCE BETWEEN INDICTMENT AND INSTRUCTION. — Defendant was indicted for receiving stolen goods "well knowing" them to have been stolen. The statute under which the indictment was framed provided for conviction if accused "knows or has reason to believe" that the goods were stolen. The court instructed the jury that they should convict if defendant *knew* or *had cause to believe* the property to have been stolen. From a verdict of guilty, defendant appealed. *Held,* that this instruction was erroneous as embracing two ways in which the offense might have been committed, whereas the indictment was restricted to only one. Judgment reversed. *State v. Lewis.*[1]

Guilty knowledge, being the gist of the offense of receiving stolen goods,[2] must be averred and proved. From the very nature of the crime, it is necessary that this knowledge be capable of proof by inference from circumstances.[3] Since the courts generally say that the knowledge element is sufficiently established where circumstances give rise to an inference that the accused *believed* that the goods were stolen at the time he received them,[4] a *belief* is sufficient for conviction, even though the indictment, in consonance with the statutory definition of the crime, charges the accused with *knowing* that the goods were stolen. In such cases, the courts base their decisions on the ground that for the purposes of the statute there is no difference between *knowledge* and *belief.*[5] On this proposition, both the majority and dissenting judges in the principal case are agreed.[6]

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[1] 187 S. E. 315 (W. Va. June, 1936). A dissenting opinion which cites authority in support of the original dissent is reported in 187 S. E. 728 (W. Va. Oct., 1936). A concurring opinion elucidating the original holding is reported in 188 S. E. 473 (W. Va. Dec., 1936). This comment discusses the case as modified or explained by these later filed opinions.

[2] 3 BISHOP, NEW CRIMINAL PROCEDURE (1931) § 986; 2 BISHOP, CRIMINAL LAW (9th ed. 1923) § 1138; 2 WHARTON, CRIMINAL LAW (11th ed. 1912) § 1229.

[3] *Id.* at § 1230; 3 BISHOP, NEW CRIMINAL PROCEDURE § 991.

[4] That a guilty belief satisfies the requirement that the accused have guilty knowledge has been held in a long line of cases: State v. Stathos, 208 N. C. 456, 181 S. E. 273 (1935); State v. Van Treese, 198 Iowa 984, 200 N. W. 570 (1924); Ellison v. Commonwealth, 190 Ky. 305, 227 S. W. 458 (1921); Regina v. White, 1 F. & F. 665 (1859). Among the numerous cases containing dicta to the same effect are Commonwealth v. Baker, 115 Pa. Super. 183, 187, 175 Atl. 438 (1934); Meath v. State, 174 Wis. 80, 83, 182 N. W. 334 (1921); Commonwealth v. Leonard, 140 Mass. 473, 479, 4 N. E. 96 (1886).

[5] State v. Treese; Commonwealth v. Leonard; Meath v. State; Commonwealth v. Baker, all *supra* n. 4, are cases which say expressly that belief is equivalent to knowledge.

[6] 187 S. E. 315, 318; 187 S. E. 728; 188 S. E. 473, cited *supra* n. 1.

The difference of opinion in the case seems to be based on a difference in the interpretation of the meaning and purpose of the phrase "reason to believe"[7] which appears in the 1931 statute[8] defining the crime of receiving stolen goods. The majority of the court interpret the phrase to mean the existence of circumstances which *ought to create*[9] a belief in the mind of the accused that the goods were stolen. Under this interpretation, the words "reason to believe" in the statute are designed to dispense with the necessity of establishing either knowledge or its equivalent, belief, in order to secure a conviction. This construction of the statute would permit a conviction under a less quantum of proof than is required when knowledge or belief must be proved because the necessity of establishing the mental reaction of the accused to the extant facts is thus dispensed with. The dissenting judges treat the phrase "reason to believe" as meaning a belief founded in reason.[10] Under this interpretation, the word "reason" would merely be descriptive of the factual circumstances on which the mental reaction, *i.e.*, belief, of the accused must be based. The phrase "reason to believe" thus meaning the same thing as "believe", and *belief* being equivalent to *knowledge*, the quantum of proof necessary for conviction would be exactly the same whether the prosecution set out to establish that defendant *knew* or that he had *reason to believe*.

The cases cited by the dissenting judges[11] show that the phrase "reason to believe" is used in conjunction with other language in such a manner as to preclude interpreting it as meaning "believe".[12] The courts apparently confine their use of the phrase to

[7] The instruction complained of did not use the words "reason to believe" but charged that if ". . . . defendant knew or had cause to believe . . . ." that the jury should convict. The majority opinion takes notice of the substitution of the word "cause" for the word "reason" as it appears in the statute, but the case is considered as if the lower court had used the exact words of the statute.

[8] W. VA. REV. CODE (1931) c. 61, art. 3, § 18.

[9] The words *"ought to create"* appear in the case of Meath v. State, 174 Wis. 80, 182 N. W. 334 (1921), which is quoted with approval in the concurring opinion in 188 S. E. 473. It is used here to illustrate the interpretation which the court places on the word "reason".

[10] See the dissenting opinion, 187 S. E. 315, 317 (W. Va. 1936).

[11] 187 S. E. 728 (W. Va. 1936).

[12] That defendant ought to have known is not enough; the jury must be satisfied that he did know or believe, Meath v. State, 174 Wis. 80, 182 N. W. 334 (1921); circumstances causing a reasonable man to believe is evidence from which the jury may infer knowledge, Ellison v. Commonwealth, 190 Ky. 305, 227 S. W. 458 (1921); knowledge may be proved by circumstantial evidence sufficient to cause defendant to believe, State v. Van Treese, 198 Iowa 984, 200 N. W. 570 (1924). Late cases to the same effect are State v.

defining what constitutes a valid basis for an inference that the accused had the requisite guilty knowledge or belief. In other words, "reason to believe" is used as meaning factual circumstances. Thus the interpretation of the majority of the court in the present case appears to be sustained by the decided cases in other jurisdictions. Since this interpretation of the statute recognizes a difference in the amount of circumstantial proof necessary to establish knowledge as distinguished from reason to believe, it is clear that the rights of the accused are prejudiced by instructions such as are urged as cause for reversal in the present case.

However, that there is an alternative approach to the question culminating in a result differing from that of the present case is illustrated by a recent Alabama decision.[13] In that case, the Alabama court, when called upon to decide a problem identical[14] with that presented in the principal case, interpreted the statute as did the West Virginia court but upheld the instruction on the ground that the indictment was broad enough to cover the statute completely.[15] This seems to be a reasonable result and one which might well have been attained in the principal case.

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Stathos, 208 N. C. 456, 181 S. E. 273 (1935); Wilson v. State, 55 Okla. Cr. 22, 24 P. (2d) 296 (1933).

[13] Farzley v. State, 231 Ala. 60, 163 So. 394 (1935). See also Farzley v. State, 163 S. E. 393 (Ala. App. 1935).

[14] The statute, indictment and instruction given in Farzley v. State, *supra*, are almost identical with those in State v. Lewis, 187 S. E. 315 (W. Va. 1936). A possible difference in the cases is that the form of the indictment is set forth by statute in Alabama.

[15] Farzley v. State, 231 Ala. 60, 163 So. 394 (1935) relies for its holding on Lindsey v. State, 221 Ala. 175, 128 So. 210 (1930). The Alabama court says that the indictment informs the defendant that he is accused of the crime of receiving stolen goods. Since the elements of this crime are defined only by statute, the defendant must then know that he is charged with the crime as thus defined. Defendant is not, therefore, prejudiced by instructions to the jury in the words of the statute.