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IN THE PROVINCIAL COURT OF NOVA SCOTIA

R

vs.

DANIEL HAMILTON

Cite as: R. v. Hamilton, 2001 NSPC 24

DECISION

The Honourable Judge C. H. F. Williams
Delivery orally October 1st, 2001

COUNSEL: Mr. C. Nicholson, Crown Attorney
Mr. P. Kidston, Defence Attorney

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Introduction

On 19th July 2000, Mr. Stephen Brown's 1987 Chevrolet Rangler truck was stolen. He had purchased it for \$5,500.00 in March 2000. Nonetheless, he could easily identify the vehicle because of specific and extensive repairs he had made to it. These repairs included welding to the cab and firewalls and a patch on the gas tank. In addition, the vehicle had no latch on the tail gate and the box had many holes in it.

In August 2000 Mr. Brown saw Mr. Hamilton, the accused, driving a truck that looked similar to his stolen vehicle. As a result, he went to the accused place of business, an auto salvage yard, and walked around, without announcing his presence, looking for some evidence to bring to the attention of the authorities. The salvage yard was unfenced and anyone could walk on at any time. Under a pile of car junk, near the perimeter of the property, he found, buried in the ground, what he believed to be the crushed cab of his stolen vehicle. He reported his find to the police who subsequently, under the authority of a search warrant, unearthed the cab. Mr. Brown was able to identify the cab as part of his stolen vehicle from the distinguishable welding work. In addition, he could identify the vehicle box on a Chevrolet pickup truck, that the accused was driving, as the one that belonged to his stolen vehicle.

The accused admitted that he found the box inside the junkyard and subsequently attached it to his vehicle. He did not know that it was stolen. However, the police have charged him with possession of stolen property with a value exceeding five thousand dollars.

Issue

The Crown contends that in the circumstances of this case, the mere possession of stolen property is sufficient to establish an inference of guilt. This case therefore requires an assessment of whether I should conclude that the mere possession of stolen goods is enough to find the possessor guilty of the offence of possession of stolen goods.

Evidential Finding of Facts

I find that the material and relevant facts are:

1. Someone stole Mr. Brown's truck on which he had done some distinguishable welding repairs.
2. Mr. Brown saw the accused, who managed a salvage yard, driving a truck that looked very similar to his stolen vehicle.
3. Suspecting that the accused might somehow be involved in the theft of his vehicle Mr. Brown went to the salvage yard to look for evidence to bring to the attention of the police.
4. He found the stolen cab crushed and buried near the perimeter of the salvage yard. The missing box was on a vehicle driven by the accused.
5. The accused has criminal convictions for theft and possession of stolen property. However, he found the stolen box on the premises and subsequently attached it to his truck.
6. The salvage yard owns a tractor. A crusher went periodically to the yard and the last time was between July and September.

Analysis

The accused testified that he managed an auto salvage yard that had no perimeter fence. Additionally, the business had five other employees. In his experience it was not unusual, at times, to find undocumented vehicles on the property. However, he was not aware of and had no knowledge that the crushed cab was on the property. Further, he had not seen it before it was brought to his attention by the police. Furthermore, although he owns a tractor that could bury the cab and a crusher attended the property between July and September, he did not bury the cab on the property nor was he aware that it was done. It was while doing a routine check of the premises, looking for parts, that he discovered the box, repaired it and attached it to his vehicle. He did not know who owned the box until Mr. Brown established his claim to it. Additionally, he did not know how the box came to be on his property and he made no enquiries. In any event, he admitted that he had a criminal record that included convictions for theft in 1981 and possession of stolen property in 1990.

The theory of the Crown is that the accused, by virtue of owning a tractor capable of burying the cab and that a crusher would have visited the yard during the time period in question, the accused had the means to bury and to crush the cab. It was more than coincidence that the accused found the box and subsequently attached it to his own vehicle. His story was very convenient.

On the other hand, the theory of the defence is that the accused manages an eighteen-acre junk yard that had no perimeter fence. It was not a secure area and anyone could enter and deposit a vehicle. Finding a box that had some utility, in a junk yard cannot, without more, be deemed to fix the accused with knowledge that it had been stolen.

In any event, it seems to me that on the authority of **R v. Kowlyk**, [1988] 2 S.C.R. 59, 43 C.C.C.(3d) 1, no adverse inference may be drawn from the mere possession of stolen property unless it was recent. Further, if the accused gives an explanation for the possession, which could reasonably be true and which I believe, no inference of guilt can be drawn from his mere possession. To obtain a conviction, in the face of that explanation, the Crown must establish, by other evidence the guilt of the accused beyond a reasonable doubt.

Here, there is no doubt that Mr. Brown's vehicle was stolen. There is also no doubt that the stolen cab was found crushed and buried in the junkyard managed by the accused. Further there is no doubt that the stolen box was found in the possession of the accused. Furthermore, there is no doubt that the junkyard covered a large acreage, was not secure and was not fenced.

However, the accused has explained that he found the box in the junkyard and, as it was useful for his purposes, he attached it to his vehicle. Additionally, he had no idea from where it came or how it got to be on the property. Likewise, he was not aware of the existence of the buried cab. He testified that there had been instances of undocumented vehicles found on the premises. Notwithstanding that he owned a tractor that could bury the cab and a crusher was available that could crush it, he neither buried nor crushed the cab and had no knowledge of the occurrence of those events.

The Crown's case rests entirely on his mere possession of the stolen property. It suggested that the accused had the means to crush and bury the cab but presented no direct or circumstantial evidence to support this supposition. True, there are suspicions. But, suspicions do not rise to the ultimate reliability test, proof beyond a reasonable ground.

In my opinion, the explanation of the accused is reasonable, and given the evidence adduced, could reasonably be true. I accept, on the evidence, that the cab could have been crushed and buried without his knowledge. I also accept that he could have found the box in the junkyard. There is nothing, on the evidence, to contradict him, or to infer otherwise. All that we have are suspicions.

Therefore, having heard the accused, his explanation, in my opinion, raises a reasonable doubt. **R.v. L'Heureux**, [1985] 2 S.C.R. 159, 21 C.C.C.(3d) 574, **R v. W(D)**, [1991]1 S.C.R.742.

Conclusion

In my opinion and given the analysis that I have made, I conclude that the Crown has not satisfied me beyond a reasonable doubt that the accused is guilty as charged. The mere possession of stolen property does not, without more, raise an inference of guilt. Accordingly, this court finds him not guilty and will enter an acquittal on the record.

