

HOGAN v DIRECTOR OF PUBLIC PROSECUTIONS (2007)

[2007] EWHC 978 (Admin)

DC ([David Clarke J](#), [Irwin J](#)) 21/2/2007

CRIMINAL LAW - CRIMINAL EVIDENCE

BURDEN OF PROOF : CONSIDERATION : DEFENCES : PROCEEDS OF CRIME :
OFFENCE OF ACQUIRING OR POSSESSING CRIMINAL PROPERTY : PROSECUTION'S
DUTY TO DISPROVE DEFENCE OF ADEQUATE CONSIDERATION ONCE MATTER
RAISED : s.329(2)(c) PROCEEDS OF CRIME ACT 2002 : CRIMINAL JUSTICE ACT 1988 :
s.340 PROCEEDS OF CRIME ACT 2002 : s.93B CRIMINAL JUSTICE ACT 1988

Once the issue of adequate consideration had been raised under the Proceeds of Crime Act 2002 s.329(2)(c), it should be regarded as an element of the offence which had to be proved by the prosecution to the normal standard.

The appellant (H) appealed by way of case stated against his convictions for the acquisition and possession of criminal property under the [Proceeds of Crime Act 2002](#). H worked for a scaffolding company (D) before starting his own scaffolding business. D's section manager became aware of scaffolding at a number of sites on which D's registered markings had been obscured by paint. H maintained that he had legitimately bought the scaffolding as surplus for £1,100 cash. He had no further contact details or receipt for the purchase, which had not been entered in any business records. D's manager testified that the recovered scaffolding had been worth in excess of £6,000. The district judge was satisfied that H had shown that he had paid a person £1,100 for the property but concluded that he had known that there was no legitimate way in which such scaffolding could have been sold and had known that it was the proceeds of crime. He concluded that [s.329\(2\)\(c\)](#) failed to provide an absolute defence upon evidence of payment being made in consideration for the property. He found that the word "adequate" within the meaning of the Act required the court to consider the whole circumstances in which the consideration had been paid to decide whether it was adequate and that the mere fact that the £1,100 paid might be considered adequate value was not the sole consideration. The district judge posed the following questions for the court's opinion: firstly, whether he had erred in law in looking at the whole circumstances of the alleged payment of consideration when concluding that H had not paid adequate consideration; secondly, whether H had been afforded with a defence under s.329(2)(c) once he had established that he had made payment of consideration which might have been adequate in value. H submitted that the burden of proof was on the prosecution to show that he had not acquired the property for adequate consideration as s.329(2)(c) did not provide a defence but a limitation on the scope of the offence. He also argued that the matter was a discrete issue which should not have been confused with issues regarding his state of mind. The prosecution accepted that the district judge had erred in considering the factors he had in relation to whether the consideration provided had been adequate but argued

that he should have considered whether H had established that the value of the consideration provided had not been significantly less than the value of the property acquired.

HELD: Once the issue of adequate consideration had been raised, the matter should be regarded as an element of the offence which had to be proved by the prosecution to the normal standard. Notwithstanding that the definition of "adequate consideration," in the 2002 Act was identical to that in the [Criminal Justice Act 1988](#), which had provided a defence at [s.93B](#), the language of the 2002 Act was clearly distinct from that in the 1988 Act and from other statutory provisions which provided defences. The question of the defence of acquisition for adequate value only arose at all under s.93B once it had been proved that the defendant had knowledge of the fact that the property represented the proceeds of crime. This showed that the change in formulation provided by s.329 had been deliberate and confirmed that a much lower mental threshold of only mere suspicion was required by the 2002 Act. The definition of criminal property as provided in [s.340](#) of the 2002 Act turned in part on the state of mind of the offender in that if he acquired or kept property whilst knowing or suspecting it to be stolen, it would be criminal property, provided the other ingredients of the definition had been made out. However, s.329(2)(c) determined that where the court had concluded that adequate consideration had been given for the acquisition of property then no offence would be made out under the Act, even if the offender had known that the property had been stolen. The question of adequacy of consideration was a separate issue from the state of mind of the offender and accordingly required separate tests. The issue of whether the consideration provided had been adequate had to be decided as a question of fact on a case-by-case basis. When examining the issue the court had an obligation to look at all the relevant circumstances drawn from the evidence. The case would be remitted to the district judge.

Appeal allowed

Counsel:

For the claimant: H Hughes

For the defendant: C Howell

Solicitors:

For the claimant: McKinnells

For the defendant: CPS

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