



**Supreme Court of New Zealand
Te Kōti Mana Nui**

29 May 2015

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

RHYS MICHAEL CULLEN v THE QUEEN

(SC 68/2014) [2015] NZSC 73

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Following a jury trial in the District Court the appellant, the manager of a scrap metal business, was convicted of 15 counts of receiving stolen vehicles. The indictment had charged the appellant with receiving the stolen vehicles “together with Tamaki Metals Limited”.

The case against the appellant related to vehicles that were found on the yard of the scrap metal business managed by the appellant and owned by Tamaki Metals, a company of which he is the sole director. The vehicles had earlier been purchased and brought on to the yard by three employees of Tamaki Metals.

The trial that gave rise to the present appeal was a retrial. It followed the quashing of Mr Cullen’s convictions at an earlier trial in which he was charged as a sole party as the Court of Appeal had taken the view that since Tamaki Metals held the scrap metal dealer’s licence for the business the appellant could have been guilty only as a party to receiving by Tamaki Metals.

Because the appellant was charged jointly with Tamaki Metals at retrial, the way in which Tamaki Metals became a party to the offending charged was in issue. The Judge directed the jury that only the appellant’s actions and state of mind could be attributed to the company as he was the “directing mind” of the company.

The appellant appealed to the Court of Appeal principally on the basis that the trial Judge had been wrong to determine that only the acts and state of mind of Mr Cullen were to be attributed to Tamaki Metals, excluding the acts and states of mind of the other employees. The Court of Appeal held that the correct approach to attribution had been taken and dismissed the appeal. The appellant sought and was granted leave to appeal to this Court.

The arguments on appeal followed those considered by the Court of Appeal. The appellant contended that the Judge's direction as to attribution deprived him of a defence that the vehicles had been received by Tamaki Metals when they were brought onto the yard by the employees and that the direction undermined the defence case that the appellant's role was limited and clerical.

The Supreme Court has unanimously dismissed the appeal.

The Court has held, disagreeing with the decision of the Court of Appeal following the first trial, that it had been an unnecessary complication to charge Mr Cullen as a party to offending committed by the company when the charge was based on the actions and state of mind of Mr Cullen alone and the company itself was not proceeded against. The joint charge was not however incorrect in law. Although Mr Cullen could have been charged on the facts as a principal, that did not prevent him equally being charged as a party to the offending with the company based on attribution to it of his receiving with knowledge or being reckless as to whether or not the cars were stolen.

The Court has also held that the appellant suffered no disadvantage as a result of the joint charge. The trial Judge correctly attributed only the actions and state of mind of Mr Cullen to the company as the employees who brought the vehicles on to the yard of Tamaki Metals did not have sufficient responsibility for their actions to be attributed to the company. By comparison, Mr Cullen worked from the yard, managing it and keeping the company records.

There was nothing to stop the employees being charged separately with offences of receiving if their actions and states of mind amounted to such offences. There is no impediment to different offences of receiving arising in a series of dealings with stolen property.

The appellant's submission that he was deprived of the defence that Tamaki Metals had already received the vehicles through the actions of the employees before the presence of the vehicles on the yard became known to Mr Cullen was held by the Court to be misconceived. It depended on and fell away with the rejection of the argument that the actions of the employees should have been attributed to the company. The trial Judge explained to the jury that how the vehicles came on to the yard was largely irrelevant. The case relied on the actions and understanding of Mr Cullen. It was only his actions and state of mind that

were put forward as the basis for his liability and through him, the company's liability in respect of the receiving.

The Court has held there was no possible miscarriage of justice in the way the matter was presented to the jury. As a result, it has dismissed the appeal.

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