立法會
Legislative Council

立法會LS32/00-01號文件

《2000年販毒及有組織罪行(修訂)條例草案》

有關《販毒(追討得益)條例》(第405章)第25條所訂的
"有合理理由相信"的資料概要

在香港特別行政區訴Shing Siu Ming, [1999] 2HKC 818一案中，上訴法庭曾解釋《販毒(追討得益)條例》(第405章) (下稱"該條例")第25(1)(a)條所訂"有合理理由相信"的涵義。在此宗上訴案件中，要裁決的問題是部分上訴人是否知道或有合理理由相信他們協助的人是一名曾從販毒獲利的毒販，因而違反該條例第25(1)(a)條的規定。法庭認為，"有合理理由相信"此一詞彙同時涵蓋主觀和客觀的元素。控方一方面須證明存在理由，而有常識和思想健全的市民會認為該等理由足以導致某人相信所協助的人是毒販，或曾從販毒獲利，這是客觀元素。另一方面，控方亦須證明被告知道該等理由，這是主觀元素。

2. 鑒於政府當局建議的條文寫法有"有合理理由懷疑"此一詞彙，在此討論該詞彙的涵義大概亦屬適當。根據《刑事上訴報告260》(Criminal Appeal Report 260)所載R.訴Hall 81一案，英國上訴法院根據《盜竊法令》(Theft Act)在審理有關處理贓物的案件時，把懷疑和相信加以區別。法院認為，"如有人從擁有第一手資料的人士(例如竊賊或入屋行劫者)獲悉某些財物被偷竊，我們可稱該人知道有關情況。"相信"當然是指對某些情況並不知情。我們可把"相信"說成某人的精神狀況，而該人對自己說："我不可以說我肯定知道此等財物被偷竊，但考慮到所有情況，考慮到我所聽所見的一切，我無法得出其他合理的結論"。上述兩種精神狀況的任何一種，均足以符合法例所訂的有關涵義。即使被告對自己說："儘管我已目睹和聽到各種情況，我仍拒絕相信自己在思想上已知是明顯的情況"，第二種精神狀況(即相信)仍足以符合有關涵義。純粹懷疑當然不足，即"我懷疑此等財物可能被偷竊，但另一方面又可能並非如此"。此一精神狀況當然不屬"知道或相信"此一詞彙的涵義範圍。"

3. 隨文附上該兩宗案件的提要，供委員參閱。

連附件

立法會秘書處
法律事務部
2000年11月27日

HKSAR v SHING SIU MING & ORS

COURT OF APPEAL
CRIMINAL APPEAL NO 415 OF 1997
POWER VP, MAYO AND STUART-MOORE JJA
4 SEPTEMBER 1998, 23 OCTOBER 1998 (on conviction)
29 OCTOBER, 11 NOVEMBER 1998 (on sentence)

Criminal Law and Procedure – Summing up – Counsel not to interrupt delivery of summing up to make submissions on judge's direction on law – Submissions to be made at natural break or after summing up – Unless mistakes of fact in summing up – No irregularity to give jury copies of sections of relevant Ordinance when judge had explained to jury how the law should be applied

Criminal Law and Procedure – Drug trafficking – Conspiracy to traffic – Dealing with proceeds of drug trafficking – Separate and distinct charges – Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) s 25(1)(a)

Criminal Law and Procedure – Mens rea – Assisting another to retain benefit of drug trafficking – Meaning of 'having reasonable grounds to believe' – Involving subjective and objective elements – Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) s 25(1)(a)

Criminal Law and Procedure – Sentencing – Assisting another to retain benefit of drug trafficking – Considerable assistance to substantial scale and lengthy period of trafficking activities – Seven years' imprisonment not wrong in principle or manifestly excessive – Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) s 25(1)(a)

Words and Phrases – 'Having reasonable grounds to believe' – Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) s 25(1)(a)

刑法與刑事訴訟程序 – 總結 – 大律師不應打斷法官的總結以作出有關法律上的指示的陳詞 – 陳詞應在自然的中斷或總結後作出 – 除非在總結中出現事實方面的錯誤 – 當法官已向陪審團解釋法律應如何被引用，向陪審團提供有關條例的條文的副本並無不符合規定之處

刑法與刑事訴訟程序 – 販毒 – 串謀販毒 – 處理販毒得益 – 各別和獨立的控罪 – 《販毒 (追討得益) 條例》(第 405 章) 第 25(1)(a) 條

刑法與刑事訴訟程序 – 犯罪意圖 – 協助他人保留販毒得益 – 「有合理理由相信」的涵義 – 涉及主觀及客觀的元素 – 《販毒 (追討得益) 條例》(第 405 章) 第 25(1)(a) 條

刑法與刑事訴訟程序 – 判刑 – 協助他人保留販毒得益 – 針大宗以及長時期的販毒活動提供相當的協助 – 七年監禁並非原則上有錯誤或明顯地過重 – 《販毒 (追討得益) 條例》(第 405 章) 第 25(1)(a) 條

詞彙 – 「有合理理由相信」 – 《販毒 (追討得益) 條例》(第 405 章) 第 25(1)(a) 條

The first applicant was charged with conspiracy to traffic in dangerous drugs and for dealing with property known or reasonably believed to represent the proceeds of drug trafficking contrary to s 25(1)(a) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405). The second and third applicants were charged with assisting the first applicant to retain the benefit of drug trafficking, contrary to the old section s 25(1)(a) of the same Ordinance. At trial the issues were whether the first applicant was part of the conspiracy and whether the second and third applicants knew or had reasonable grounds to believe that the person assisted was a drug trafficker or had benefited from drug trafficking. The applicants were convicted by a judge and a jury. On appeal, it was argued, inter alia, that

(i) there was a material irregularity in the trial as the jury was supplied with a copy the Drug Trafficking (Recovery of Proceeds) Ordinance thereby enabling them to interpret and direct themselves on law;

(ii) in respect of the case of the first applicant, the judge erred in failing to require the prosecution to elect to proceed on either the conspiracy count or the substantive count contrary to s 25(1);

(iii) the trial judge misdirected the jury in respect of the meaning of the phrase 'knowing or having reasonable grounds to believe' which was the requisite mental element in proving an offence under s 25(1).

On 23 October 1998 the Court of Appeal dismissed all three applicants' applications for leave to appeal against sentence. The second and third applicants proceeded to their applications for leave to appeal against their respective sentences of seven years' imprisonment.

Held, dismissing the applications for leave to appeal against conviction and sentence:

(1) The jury had only received copies of the relevant sections of the Ordinance. Further, the judge had given a detailed explanation on the sections and directions on how the law should be applied. The provision of copies was a matter of providing an aide memoire. There was no irregularity (at 823I-824C).

(2) The conspiracy count and the related substantive count contrary to s 25(1) were not alternative charges. They were separate and distinct charges and independent of each other. A person could be charged with both drug trafficking and dealing with the proceeds of the trafficking (at 824C-E).

(3) 'Having reasonable grounds to believe' involved subjective and objective elements. It required proof that there were grounds that a common sense, right-thinking member of the community would consider were sufficient to lead a person to believe that the person being assisted was a drug trafficker or had been assisted therefrom. This was the objective element. It also had to be proved that

these grounds were known to the defendant. This was the subjective element. The judge had set too high a burden of proof in directing that there must be belief by the defendant (the subjective element) and that a reasonable man would have held such a belief (the objective element). While there were misdirections, there was no injustice to the applicants as the judge placed a higher burden on the prosecution. The directions favoured the defence (at 825H-I, 829G-830B).

(4) The trafficking activities were of a substantial scale and over a lengthy period. Both the second and third applicants gave considerable assistance to the first applicant. In the light of the facts, it was not realistic to attempt to differentiate between their criminality. Both were aware or in a position to have been aware of the implications of their involvement. The judge was mindful of the necessity of bringing home to anyone who contemplated rendering assistance in this way the dire consequences which would ensue if they were brought to justice. It could not be said these sentences were either wrong in principle or manifestly excessive (at 832C/D-F).

Obiter

It was most inappropriate for counsel to interrupt the judge and complain about directions on the law when the judge was in the course of delivering the summing-up. It was for the judge to structure and present his summing-up. If it was incorrect or incomplete as to the law these matters should be pointed out to him in the absence of the jury at a natural break or after the summing-up had been completed. If the judge had made an error of fact, however, it was proper for counsel to immediately draw the judge's attention to it (at 827C/D-F).

Legislation referred to

Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) ss 4(1)(a), 25 (1), (4) (former sections superseded by No 89 of 1995), 25(1), 25A

[*Editorial note*: as to summing up to the jury in trials before the Court of First Instance generally see *Halsbury's Laws of Hong Kong* Vol 9, Criminal Law and Procedure [130.780] et seq].

Applications

These were applications for leave to appeal against conviction and sentence. At a trial before Saied J and a jury, the first applicant was convicted of conspiracy to traffic in dangerous drugs and of dealing with property known or reasonably believed to represent the proceeds of drug trafficking and was sentenced to 30 years' imprisonment. The second and third applicants were each convicted of assisting another to retain the benefit of drug trafficking and sentenced to seven years' imprisonment. The facts appear sufficiently in the following judgment.

Jerome Matthews and Raymond Yu (Paul Kwong & Co) for the first and second applicants (on conviction only).

Christopher Grounds (Oldham Li & Nie) for the third applicant.

First applicant in person (on sentence).

Second applicant in person (on sentence).

Michael Blanchflower and Alex Lee (Director of Public Prosecutions) for the respondent.

Mayo JA: The first applicant who was tried before Saied J and a jury seeks leave to appeal against his conviction for a conspiracy to traffic in dangerous drugs and for dealing with property known or reasonably believed to represent the proceeds of drug trafficking. He also seeks leave to appeal against the sentence of 30 years' imprisonment imposed upon him in respect of these offences.

The second applicant who is the common law wife of the first applicant seeks leave to appeal against her conviction for assisting another to retain the benefit of drug trafficking and leave to appeal against the sentence of seven years' imprisonment imposed upon her for this.

The third applicant who is the younger sister of the first applicant seeks leave to appeal against her conviction for a similar offence to the second applicant and leave to appeal against the sentence imposed upon her of seven years.

Particulars of the offences in question are as follows:

Count 1

SHING Siu-ming, between about the 15th day of November, 1994 and the 25th day of November, 1995 in Hong Kong and in Australia, conspired with LEE Cheung-wah, CHAN Chung-kan, WONG Kong-loong, CHAN Man-shan, LAM Vi (also known as Vi LAM), HONG Lu (also known as Lu HONG), LI Yi (also known as Yi LI), TAN Min-jing (also know as Min Jing TAN) and persons unknown to traffic in a dangerous drug, namely heroin.

Count 2

KWONG Po-yin, between about the 6th day of February, 1995 and the 31st day of August, 1995 in Hong Kong, was concerned in an arrangement whereby the retention or control by or on behalf of SHING Siu-ming of the said SHING Siu-ming's proceeds of drug trafficking was facilitated, in respect of: (i) Hong Kong currency $834,754.93, (ii) Hong Kong currency $1,310,975.00, and (iii) Hong Kong currency $500,000.00, knowing or having reasonable grounds to believe that the said SHING Siu-ming carried on or had carried on drug trafficking or had benefited from drug trafficking.

Count 3

SENG Yuet-fong, between about the 9th day of May, 1995 and the 31st day of August, 1995 in Hong Kong, was concerned in an arrangement whereby the retention or control by or on behalf of SHING Siu-ming of the said SHING Siu-ming's proceeds of drug trafficking was facilitated, in respect of Australian currency $1,527,000.00, knowing or having reasonable grounds to believe that the said SHING Siu-ming carried on or had carried on drug trafficking or had benefited from drug trafficking.

Count 4

SHING Siu-ming, between the 1st day of September, 1995 and the 27th day of November, 1995 both dates inclusive, in Hong Kong, knowing or having reasonable grounds to believe that property of a value of Australian currency

the prison, to play a part in the agreed course of conduct in furtherance of that criminal objective. Neither the fact that he intended to play no further part in attempting to effect the escape, nor that he believed the escape to be impossible, would, if the jury had supposed they might be true, have afforded him any defence.

In the result, I would answer the first part of the certified question in the affirmative and dismiss the appeal. Your Lordships did not find it necessary to hear argument directed to the second part of the certified question and it must, therefore, be left unanswered.

LORD BRIGHTMAN, My Lords, I find myself in complete agreement with the reasoning and conclusion of my noble and learned friend, Lord Bridge of Harwich, and so would dismiss the appeal.

Appeal dismissed.

Solicitors: Kidd, Rapinet, Badger & Co. for the appellant. Director of Public Prosecutions, for the Crown.

BEFORE

THE LORD CHIEF JUSTICE, MR. JUSTICE BOREHAM AND MR. JUSTICE MACPHERSON

EDWARD LEONARD HALL

March 11, 1985

Handling Stolen Goods—"Knowing or Believing" Goods to be Stolen—Meaning—Theft Act 1968 (c.60), s.22(1).

By section 22(1) of the Theft Act 1968: "A person handles stolen goods if (otherwise than in the course of stealing) knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so."

On a charge of handling stolen goods contrary to section 22(1) of the Theft Act 1968 the jury should be directed that a man may be said to know that goods are stolen when he is told by someone with first hand knowledge (*i.e.* such as the thief or the burglar) that such is the case. Belief, which is something short of knowledge, may be said to be the state of mind of a person who says to himself that he could not be certain that the goods are stolen but there could be no other reasonable conclusion, in the light of all the circumstances, in what he had heard or seen. Either of those two states of mind is enough to satisfy the words "knowing or believing" them to be stolen goods in section 22(1) of the Act of 1968. Mere suspicion is not enough. GRIFFITHS (1974) 60 Cr.App.R. 14 explained and distinguished.

[For section 22(1) of the Theft Act 1968, see *Archbold*, 41st ed., para. 16-147.]

Appeal against conviction.

On April 4, 1984, at the Crown Court at Gloucester (Judge Braithwaite) the appellant was convicted of handling stolen goods and on May 3, 1984 he was sentenced to three years' imprisonment. The facts appear in the judgment.

The case is reported on the guidelines to be followed on the approach to the phrase "knowing or believing" goods to be stolen on a charge of handling stolen goods contrary to section 22(1) of the Theft Act 1968.

Tudor Owen (assigned by the Registrar of Criminal Appeals) for the appellant. *Lloyd Williams* for the Crown.

BOREHAM J. On April 4, 1984, the appellant, Edward Leonard Hall, was convicted at the Crown Court at Gloucester before his Honour Judge Braithwaite and a jury of one count of handling stolen goods. On May 3, 1984, he was sentenced for that offence to three years' imprisonment. He now appeals by leave of the single judge against his conviction. The same judge refused his application for leave to appeal against sentence; that application, we understand, has not been renewed.

At the same court, two others were convicted of offences connected with this handling. Terence Biro, aged 55, pleaded guilty to burglary and was sentenced to two years' imprisonment and another, George Grey, pleaded guilty to the same burglary and was sentenced to two years' imprisonment which was suspended for two years.

Those two accused, Biro and Grey, on the night of August 8/9, 1983, broke into a mansion in Gloucestershire. The occupants were away. They stole pictures, silver, china, clocks and other articles and three suitcases in order to transport them. The total estimated value of their haul was £26,000. At about 8.40 the next morning (that is, August 9) Regional Crime Squad officers saw the two men being met by this appellant outside a block of flats in Peckham Rye. They handed the appellant a suitcase, they each carried another suitcase and they all entered the flats. About ten minutes later Sergeant Lynch and another of those officers knocked at the door of one of the flats in that building. They heard some running about within the flat. The door was eventually opened by the appellant and the co-accused, Biro and Grey, were present inside together with the appellant's mother. On the floor was a blanket concealing a substantial number of silver spoons and forks which the appellant said Grey and Biro had brought. He said that they were house clearers and that he was a dealer in antiques. All three of them were arrested. The three suitcases and the articles they had contained were seized. There were on the floor some paintings, some silver cutlery was in a kitchen drawer and some china articles had been tidily arranged on shelves in the room and on the television set. All those articles were ultimately identified by the owners of the property in Gloucestershire.

The appellant maintained throughout the interview that the other two, Biro and Grey, must have tried to hide some of the property when the police knocked on the door. He said they told him that the property had come from a house clearance