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orate, is not as strong as that in other North Carolina cases, the jury commissioners are seemingly traveling a path that is perilously close to the danger area.

G. L. Grantham, Jr.

Criminal Law—Receiving Stolen Goods—Elements in the Crime

In *State v. Yow*, the defendant was indicted for larceny and receiving stolen goods. The state's evidence tended to show the following: Prosecuting witness had a pistol stolen from a locked compartment in his car parked in front of the defendant's sandwich shop. Immediately previous to the theft, the prosecuting witness had shown the defendant the pistol, and had thereafter absented himself from his car for a period of not more than five minutes, during which time the pistol was stolen. Defendant denied all knowledge of the crime, and promised to aid in returning the stolen article. Two months later, officers with a search warrant entered the defendant's home and asked defendant's wife the location of the pistol. She directed them to a dresser where it was found unconcealed in the top drawer. The defendant's motion for a non-suit was denied. The jury acquitted the defendant upon the charge of larceny, but found him guilty of receiving stolen goods. On appeal, the Supreme Court of North Carolina reversed the conviction and held the non-suit should have been allowed, among other grounds, for insufficient evidence that the defendant received the goods, or if he did, that he received them with a felonious intent.

It is necessary in order to convict an accused of receiving stolen goods that the state prove the property was received, that at the time of receipt it was stolen property, that the receiver knew the property was stolen, and that his intent in receiving it was felonious.2

It must be shown that, in fact and in law, the property was stolen at the time of receipt by the accused.3 If the goods were not stolen, or were stolen but have since come back into the possession of the

2 N. C. Gen. Stat. (1943) §14-71: Receiving stolen goods: If any person shall receive any chattel, property, money, valuable security or other things whatsoever, the stealing or taking whereof amounts to larceny or a felony, either at common law or by virtue of any statute made or hereafter to be made, such person knowing the same to have been feloniously stolen or taken, he shall be guilty of a misdemeanor, and may be indicted and convicted, whether the felon stealing and taking such chattels, property, money, valuable security or other thing, shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and any such receiver may be dealt with, indicted, tried and punished in any county in which he shall have, or shall have had, any such property in his possession or in any county in which the thief may be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county where he actually received such chattel, money, security, or other thing; and such receiver shall be punished as one convicted of larceny.
3 State v. Shoaf, 68 N. C. 373 (1873).
NOTES AND COMMENTS

owner or his authorized agent, the defendant does not commit the crime by receiving them, even though he may believe the property to be stolen. For this reason, neither the owner nor the law enforcing officers may use previously stolen goods for the purpose of entrapping the defendant. Likewise, the receiver is not guilty of receiving stolen goods if the original taking of the property was without felonious intent.

At common law and by the express terms of the statute in this state, it is necessary that the receiver shall know that the property has been stolen at the moment he receives it. Guilty knowledge may be inferred from the circumstances of receipt, but it must be established that the defendant was possessed of either actual or implied knowledge. In North Carolina guilty knowledge may not be proved by showing that a reasonably prudent man would have known the goods received were stolen, for the test in this jurisdiction is the knowledge of the defendant alone, though in many jurisdictions the reasonably prudent man rule is applied. Guilty knowledge may be inferred when the accused purchased the goods at a price considerably less than their value, or when other stolen property has been found in his possession. Proof that he has altered the character of the goods received, or that he has committed other similar criminal acts may also tend to establish the requisite guilty knowledge. Proof that the accused subscribed to a newspaper which carried an account of the robbery of goods later found in his possession was held sufficient to establish scienter.

The goods must be received into the possession of the defendant, but this receipt may be either actual or constructive. And when the goods are found in the exclusive dwelling house of the defendant, this is evidence to be considered by the jury that they have been received. Sufficient evidence of possession and receipt will be proved if it be shown that the goods were received by the defendant’s agent or servant, or at his instigation were deposited by the thief in some place directed by

4 See Notes, 66 A. L. R. 506 (1930); 86 A. L. R. 272 (1933).
5 United States v. De Bare, 6 Biss. 358, Fed. Cas. No. 14,935.
6 Kirby v. United States, 174 U. S. 47 (1873); State v. Shoaf, 68 N. C. 375 (1873).
11 Ibid.; State v. Murphy, 84 N. C. 742 (1881).
13 State v. Dail, 191 N. C. 231, 131 S. E. 573 (1926); State v. Stancil, 178 N. C. 633, 100 S. E. 241 (1919); State v. Murphy, 84 N. C. 742 (1881).
16 Ibid.; see State v. Brown, 76 N. C. 222, 226 (1877).
him. If the defendant received the goods from an innocent agent of the thief, or if he received them from another who previously received the goods from the thief, under such circumstances that the first receiver was guilty of the offence, the defendant in this state and by the better view is guilty of receiving stolen goods. It is generally held that the wife does not commit the offence by receiving from her husband; but he is not so favored when he receives stolen goods from her.

Another element which must be proved in the crime of receiving stolen goods is that the defendant received the stolen property with a felonious intent, and the case will be reversed on appeal if the judge's instructions fail properly to submit this issue to the jury. It is sufficient to prove the defendant intended to aid the thief, but proof that the defendant intended to benefit personally by receiving the goods is not essential. If the defendant receives the goods intending to hold them for reward, or to use them in the commission of another crime, his intent is felonious. Evidence of felonious intent may be found where the defendant first denies possession of goods later found in his possession, or when he attempts to disguise the goods by changing their character, or when he is charged with a crime and remains silent though at liberty to speak. Where the defendant was in possession of stolen goods, and not only failed to explain the possession, but made contradictory statements concerning how he acquired them, our court held it was within the province of the jury to determine his intent. However, felonious intent may not be proved from mere recent possession of stolen goods, as the presumption of guilt arising from unexplained recent possession, without more, does not extend to the statutory crime of receiving stolen goods. In this state the presumption arising from recent possession applies only to the offence of larceny, and therefore, when an indictment charges in one count larceny, and in the other receiving stolen goods, if the instructions to the jury

State v. Weinstein, 224 N. C. 645, 31 S. E. 2d 920 (1944); State v. Stroud, 95 N. C. 626 (1886).

Miller, Criminal Law, 398 (1934); State v. Cannon, 218 N. C. 466, 11 S. E. 2d 301 (1940) (where defendant received from a former guilty receiver). Clark and Marshall, Crimes, 509 (3rd ed. 1927); see, State v. Wilson, 176 N. C. 751, 97 S. E. 496 (1918).


State v. Dail, 191 N. C. 234, 133 S. E. 574 (1925).


State v. Worthington, 64 N. C. 594 (1870).


relate only to the presumption which may arise concerning the first count, the defendant is entitled to a new trial should he be convicted solely upon the count of receiving stolen goods. If the defendant does not have knowledge that the goods are stolen, or if he receives them for a lawful purpose such as to return them to the owner, he may not be found to have a felonious intent.

In accord with the practice which is authorized by statute in this state, the defendant in the principal case was indicted on two counts, one for larceny, and the other for receiving stolen goods. This procedure was adopted by our courts as early as 1848, and soon thereafter the first statute was enacted codifying it.

Under this type of indictment the court, in an early case approved a general verdict of guilty upon several counts; this verdict, of course, did not specify upon which count the defendant was found guilty. The court's reasoning was, that in any event, since only one sentence could be given upon the general verdict, there could be no prejudice to the defendant. Without modification, this is the law today.

Both at common law and by the weight of authority, the general rule is that when a larceny has been committed, the principal thief, that is the one who is guilty of the actual caption and asportation, cannot be adjudged guilty of criminally receiving, for the reason that he cannot receive from himself. However, this is not the rule in North Carolina, for a general verdict of guilty constitutes a distinct and separate verdict of guilty upon each count, and therefore, in this state, a defendant may be found guilty of both crimes. On appeal, the Supreme Court will sustain the general verdict if there be sufficient evidence to prove either one of the two counts, for the Court apparently presumes that the jury based their verdict upon the good count. In the principal case the defendant was found guilty of receiving stolen goods but was acquitted of larceny. Therefore, when the court found there was insufficient evidence to support a verdict of guilty of receiving stolen goods,

29 State v. Lowe, 204 N. C. 572, 169 S. E. 180 (1933); State v. Adams, 133 N. C. 667, 45 S. E. 553 (1907).
32 N. C. Gen. Stat. (1943) §15-151: Larceny and receiving: "... The defendant may be charged in the same indictment in several counts with the separate offenses of receiving stolen goods, knowing them to be stolen, and larceny."
33 State v. Williams, 31 N. C. 140 (1848).
35 State v. Williams, 31 N. C. 140 (1848).
37 See Note, 136 A. L. R. 1088 (1942); State v. Worthington, 64 N. C. 594 (1870).
38 State v. Cross, 106 N. C. 650, 10 S. E. 854 (1890).
the defendant was set free. However, under the same set of facts, it is quite possible that a conviction might have been sustained and the defendant sent to prison had the jury returned a general verdict as is the usual practice instead of a special verdict. For if a general verdict had been rendered, the court would not have been limited to examining only the evidence in the crime of receiving stolen goods, but would have been at liberty to consider the evidence presented on the count of larceny. If the court had found sufficient evidence of the defendant's guilt of larceny, then the general verdict would have been sustained even though the jury in fact had rendered the verdict upon the count of receiving stolen goods. Since the crimes are mutually exclusive, it would seem that the jury should only be allowed to render a special verdict upon this type of indictment, and that the defendant is prejudiced by the use of the general verdict. From the standpoint of the prosecution, the result is a desirable one, for in many cases it is extremely difficult to determine whether the defendant actually stole the goods or merely received them.

In the principal case, it is clear that two elements of the crime were definitely proven. First, that the pistol was stolen, and secondly that the defendant had knowledge that the pistol was stolen. Therefore, the only other elements which the state had to prove were that the defendant received the pistol, and that he did so with a felonious intent. The Supreme Court apparently decided that the evidence on the latter two points was insufficient even to go to the jury.

The exercising of any control or dominion over stolen goods is sufficient to constitute receiving, and it is not necessary that there be an actual manual possession. Since there can be no possession without a previous receipt, proof of possession should be proof of receipt. In State v. Johnson, proof of possession was established when the goods were found in the exclusive dwelling house of the defendant, and this holding received approval in the dictum of a later case. Since the principal case, the court has had before it State v. Warren, in which a general verdict of guilty of larceny and receiving stolen goods was upheld. In this case the only evidence that the defendant received the stolen goods was that they were found hidden in his home, yet apparently

41 45 AM. JUR.: RECEIVING STOLEN GOODS, §3, p. 385.
42 60 N. C. 236 (1864).
44 228 N. C. 22, 44 S. E. 2d 207 (1947).
this evidence was found sufficient to prove the defendant received the goods. Since proof of the element of receiving has seldom been questioned in this jurisdiction, the court has not had an opportunity to express itself fully upon this subject. However, in view of past decisions, it would seem that at least in the present case, there was sufficient evidence to allow the jury to determine whether the defendant had received the goods.

There was no direct evidence in the case that the defendant received the stolen goods with a felonious intent. This left only the question of whether the circumstances under which the defendant received the goods were such that his felonious intent might be implied. Since the presumption which arises from recent possession had no application, the jury at most was left to conjecture whether the defendant received the stolen goods with a felonious intent, or received them for the purpose of returning the goods to the rightful owner as he had promised to do. Unquestionably these circumstances alone were not sufficient to imply that the defendant received the goods with felonious intent, for our Court has said, "When the act of a person may be attributed to two or more motives, the one criminal and the other not, the humanity of our law will ascertain as to that which is not criminal."45

Granting that in the present case there was insufficient evidence of felonious intent, would the Supreme Court have arrived at a different result had the state proved that the defendant had been in possession of the gun for sufficient length of time to have returned it to the owner?

THOMAS A. WADDEN, JR.

Damages—Decreased Purchasing Value of the Dollar
As Element—Excessiveness

A federal district court recently sustained a jury verdict awarding $160,000 to a four-year-old boy for loss of both arms above the wrist and elbow respectively in a personal injury action.1 A most interesting aspect of the case is the importance attached to the decreased purchasing value of the dollar by the trial judge in reviewing the award on defendant's motion to set aside as excessive.2

Although expressed necessarily in terms of the dollar, the value of an award of damages is not that dollar itself, but the goods and services it will purchase. Thus fluctuations in the purchasing value of the dollar should be a proper consideration in the measurement of monetary com-

2 Id. at 101 ("In seeking to discover whether or not the jury were actuated by any improper motives in arriving at the amount of the verdict, we should attempt to measure the monetary value of the different elements of damage which were proper for their consideration; bearing in mind the decreased value of the dollar, which has come about very rapidly during the past few years.").