1972
Sept. 15

DIOMEDES ERACLEOUS
v.
THE POLICE

[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

DIOMEDES ERACLEOUS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3358).

Stealing by finding—Section 255 (1) (*iv*) *of the Criminal Code, Cap.* 154—*Porter finding a clock near aeroplane about to depart and which had just been boarded by passengers—Not surrendering it immediately upon finding and taking it, but doing so after being threatened with search—Open to trial Court to find that the Appellant believed that user could be discovered by taking reasonable steps and that he took the clock with the intention to steal it—Such intention having been formed at the time of the finding and taking.*

Intent—Cases where intent is an essential ingredient of the offence—Proof—Onus and stantard—Intent may be gathered from the circumstances of the case—Onus on prosecution to establish such intent beyond reasonable doubt.

Dismissing this appeal against conviction on a charge of stealing a clock by finding contrary to section 255 (1) (iv) of the Criminal Code, Cap. 154, the Court:

Held, (1). In the circumstances of this case (*supra*) we are of opinion that it was open to the trial Court to find, beyond reasonable doubt, that the Appellant, at the time of the finding of the clock, believed that its owner could be discovered by taking reasonable steps.

(2) The next issue is whether at the time of the finding the Appellant took the clock in question with intention to steal it (*animo furandi*); there is no doubt that an essential ingredient of the offence of stealing by finding is forming the intention to steal at the time of the finding and taking (see *Thompson* v. *Nixon* [1965] 2 All E.R. 741, at p. 743).

(3) It is, also, well settled that when a particular intent is an essential ingredient of the offence such intent must be

established by the prosecution (see *Stavrinou* v. *The Republic* (1969) 2 C.L.R. 97). The intent may be gathered from the whole of the evidence adduced; but if there is any doubt as to the existence of the intent the accused is entitled to the benefit of such doubt.

(4) After a perusal of the evidence on record we are of the view that there is, really, no uncertainty as regards the particular time when the clock was found on the ground near an aeroplane by the appellant. On the other hand, in relation to the issue of whether the Appellant formed the intent to steal at that time (*viz.* at the time of the finding and taking of the clock) it is proper to take into account evidence about what occurred subsequently thereto (see Russell on Crime, 12th ed. Vol. 2, p. 1012) and until the time he handed over the clock to the authority; and in the light of the evidence we see no reason for holding that the inference of the trial Court that the Appellant formed the intention to steal the clock at the time when he found it and took it into his possession was not warranted beyond any reasonable doubt.

Appeal against conviction dismissed.

Cases referred to:

Thompson v. *Nixon* [1965] 2 All E.R. 741, at p. 743;

Stavrinou v. *The Republic* (1969) 2 C.L.R. 97.

Appeal against conviction.

Appeal against conviction by Diomedes Eracleous who was convicted on the 26th June, 1972 at the District Court of Nicosia (Criminal Case No. 1031/72) on one count of the offence of stealing by finding contrary to section 255 of the Criminal Code Cap. 154 and was sentenced by Colotas, D.J. to pay £10.- fine and was further bound over in the sum of £200.- for 3 years to be of good behaviour.

T. Papadopoullos, for the Appellant.

N. Charalambous, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The Appellant challenges his conviction by the District Court of Nicosia on a count charging him with stealing by finding an alarm-clock, contrary to section 255 of the Criminal Code, Cap. 154.

The salient facts on the basis of which the Appellant was charged were that on the 4th December, 1971, at the Nicosia Airport, where the Appellant was employed as a porter, he had in his possession the alarm-clock in question, which he had found on the tarmac, near an aeroplane which was ready to depart, and which was the property of another person.

The material parts of section 255 of Cap. 154 read as follows:-

> "255 (1) A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof."
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> .....
>
> "(2) (a) The expression 'takes' includes obtaining the possession -"
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> .....
>
> "(iv) by finding, where at the time of the finding the finder believes that the owner can be discovered by taking reasonable steps"
>
> .....

Counsel for the Appellant has invited us to hold that the trial Court was wrong in convicting the Appellant because it was not proved beyond doubt either that the Appellant *at the time* of the finding of the alarm-clock took it with the intention to deprive permanently its owner thereof, that is to steal it, or that *at such time* the Appellant believed that the owner could be discovered by taking reasonable steps.

The trial Court had found against the Appellant on both these issues; its findings were based on inferences drawn from facts established by the evidence adduced by the prosecution; the Appellant did not give evidence and called no witnesses. Our task is to decide whether the said inferences were warranted.

The clock was found by the Appellant near an aeroplane which was about to depart and which had just been boarded by passengers; we, therefore, are of the opinion that it was open to the trial Court to find, beyond reasonable doubt, that the Appellant, at the time of finding it, believed that its owner could be discovered by taking reasonable steps.

The next issue is whether at the time of the finding the Appellant took the clock with intention to steal it (*animo furandi*); there is no doubt that an essential ingredient of the offence of stealing by finding is forming the intention to steal at the time of the finding and taking; in *Thompson* v. *Nixon* [1965] 2 All E.R. 741, Sachs J. said (at p. 743) in relation to a charge of stealing by finding (based on legislation similar to our section 255):–

> " Turning now to authority, the present case falls four square within the decision in 1873 of *R.* v. *Matthews*, 12 Cox C.C. 489. That case came before the Court of Crown Cases Reserved in which there were such eminent exponents of the common law as Bramwell, B., and Blackburn, J. It related to certain heifers, and on a special verdict of the jury it was found first that, at the time when the prisoner took the heifers, he had reasonable expectation that the owner could be found, and that he did not believe that the heifers had been abandoned by the owner; secondly, that, at the time of finding the heifers, the prisoner did not intend to steal them, because the intention to steal came on him later, and, thirdly, that the prisoner, when he sent the heifers away, did so for the purpose and with the intention of depriving the owner of them, and did intend to appropriate them to his own use. In relation to those facts, the judgment of Bovill, C.J. giving the reasons for holding the prisoner not guilty contained the following passage:
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> > ' The jury have found that at the time the prisoner found the heifers he had reasonable expectation that the owner could be found, and that he did not believe that they had been abandoned by the owner. But at the same time they have found that at the time of finding the heifers the prisoner did not intend to steal them, but that the intention to steal came on him subsequently to the first interview with Stiles. That being so, the case is indistinguishable from *R.*

v. *Thurborn*, [1849] 1 Den. 387, and the cases that have followed that decision. Not having any intention to steal when he first found them, the presumption is that he took them for safe custody and unless there was some equivalent to a bailment afterwards, he could not be convicted of larceny.' "

It is, also, well settled that when a particular intent is an essential ingredient of the commission of an offence such intent must be established by the prosecution (see *Stavrinou* v. *The Republic* (1969) 2 C.L.R. 97). The intent may be gathered from the whole of the evidence adduced; but if there is any doubt as to the existence of the intent the accused is entitled to the benefit of such doubt.

Counsel for the Appellant has argued that it has not been established *when* the intent to steal was formed, because there is no proof as to *when* the clock was found.

After a perusal of the evidence on record we are of the view that there is, really, no uncertainty as regards the particular time when the clock was found on the ground, near an aeroplane, by the Appellant:

Prosecution witness Kamaritis, who is an Airport Assistant, and whose duties at the time included the supervision of loading and unloading of the luggage of the passengers and generally the supervision of airport workmen, stated that on the 4th December, 1971, at 8 p.m., there was at the airport a British European Airways aeroplane ready to depart for London; that he was present when the passengers were boarding that plane; that the Appellant was one of the workers who were loading such plane; and that, there and then, this witness received information which made him suspect that something wrong had happened and he called, as a result, a number of workmen, including the Appellant, to come to a room in the airport terminal building. An Airport Supervisor, Georghiou, asked them whether they had anything on them which did not belong to them and, if so, to surrender it, because they were going to be searched. At the time a policeman was present. The Appellant took out of the pocket of his jacket the clock and stated that he had found it under "the plane"; at that time the B.E.A. plane was parked about fifty feet away from the building.

There is no doubt that what the Appellant said made witness Georghiou understand that the plane concerned was the aforementioned B.E.A. plane, because the witness proceeded to the plane in order to find out to whom the clock belonged. So it is quite clear *when* the Appellant found the clock.

In relation to the issue of whether the Appellant formed the intent to steal at the time of the finding and taking of the clock, it is proper to take into account evidence about what occurred subsequently thereto (see Russell on Crime, 12th ed., vol. 2, p. 1012) and until the time when he handed over the clock to the authorities:

The Appellant, when he was called, as aforesaid, with other workmen, to a room of the terminal building, did not avail himself of this opportunity to disclose, at once, that he had found the clock, but, instead, he started going towards the personnel lavatory which was some distance away; he was called back and told to use the lavatory next to the room where the workmen had been asked to assemble; he was instructed by Georghiou not to close the door of the lavatory, but he proceeded to close it; Georghiou knocked on the door and asked him to open it; the Appellant opened the door and it was then, on being told that he and the other workmen would be searched, that he produced the clock out of his pocket. At the time he did not say anything to the effect that his intention had been to hand over the clock to his superiors or to the police. He said this, about two hours later, after he had been taken to a police-station.

It was, also, stated in evidence that instructions had been given to workmen that whenever they found anything during their work they ought to deliver it to their superiors at once; though a superior of the Appellant, witness Kamaritis, was near the plane, at the time when the Appellant found the clock on the tarmac under the plane, the Appellant did not deliver there and then to him the clock as soon as he had found it.

In the light of all the foregoing we see no reason for holding that the inference of the trial Court that the Appellant formed the intention to steal the clock at the time when he found it and took it into his possession was not warranted beyond any reasonable doubt.

This appeal, therefore, fails and is dismissed accordingly.

Appeal dismissed.