



22 April 2015

PRESS SUMMARY

R v GH (Respondent) [2015] UKSC 24

On appeal from [2013] EWCA Crim 2237

JUSTICES: Lord Neuberger (President), Lord Kerr, Lord Reed, Lord Hughes and Lord Toulson

BACKGROUND TO THE APPEAL

A fraudster, B, established four “ghost” websites falsely pretending to offer cut-price motor insurance. In order to carry out this plan he recruited associates to open bank accounts for channelling the proceeds. H was one such associate.

One website was named AM Insurance, which operated from 1 September 2011 to January 2012. Shortly before the website went live, H opened two bank accounts, one with Lloyds Bank and one with Barclays Bank. Subsequently, B took control of these accounts and the related bank cards. In total, members of the public were duped into paying £417,709 into the Lloyds’ account and £176,434 into the Barclays’ account for non-existent insurance cover.

B pleaded guilty to a number of offences. H stood trial at the Central Criminal Court charged with entering into or becoming concerned in an arrangement which he knew or suspected would facilitate the retention, use or control of criminal property, namely the money received into the accounts, by or on behalf of B, contrary to section 328(1) of the Proceeds of Crime Act 2002 (“POCA”). The trial judge upheld the submission that H had no case to answer, finding that at the time H entered into the arrangement no criminal property existed. The Court of Appeal dismissed the prosecution’s appeal; although it was not necessary for criminal property to exist when B and H came to the prohibited arrangement, the arrangement must relate to property which was criminal property when the arrangement began to operate on it. In this case, the money was not criminal property when the arrangement began to operate on it, in other words at the moment the money was paid into the accounts. The prosecution appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Toulson (with whom all the other Justices agree) delivers the judgment of the Court.

REASONS FOR THE JUDGMENT

Whether s 328 POCA requires property to constitute “criminal property” prior to the arrangement operating

“Criminal property” in sections 327-329 of POCA refers to property which already has the quality of being “criminal property” (as defined in section 340 of POCA) by reason of prior criminal conduct distinct from the conduct alleged to constitute the commission of the money laundering offence itself.

This accords with the natural meaning and underlying purpose of these sections [32], the explanatory notes to POCA [33] and Council Directives 91/308/EEC and 2005/60/EC [34]. If section 328 did not require property to constitute criminal property before an arrangement came into operation, it would have serious potential consequences in relation to, for example, banks and other financial institutions who are already under onerous obligations to report known, suspected or reasonably suspected money laundering [37].

Whether “criminal property” has to exist when the defendant enters or becomes concerned with the arrangement

The Court of Appeal was correct to hold that it does not matter whether criminal property existed when the arrangement was first made. What matters is that the property should be criminal when the arrangement operates on it [40].

Whether the sums received into the bank accounts constituted “criminal property” before being paid into the accounts

The submission that the money paid into the accounts represented underlying choses in action and that, therefore, criminal property existed before money was received in the accounts would presumably have involved a contract between AM Insurance and the victims. There is a stark absence of material to substantiate the existence of such a contract [42].

Whether the actus reus of the s 328 POCA offence was committed

Nonetheless, in the present case the character of the money – although lawful at the moment of payment – changed on being paid into the bank accounts. The money became criminal property in the hands of B by reason of the fraud perpetrated on the victims. As such, it is legitimate to regard H as entering into or becoming concerned in an arrangement to retain criminal property for the benefit of another. Consequently, the ruling that H had no case to answer was erroneous [47]. Although this same reasoning applies to sections 327-329 of POCA, the wide ambit of these sections can be managed by: (i) the prosecution only adding parasitic counts to substantive ones where there is a proper public purpose in doing so [48]; and, (ii) courts using their powers to discourage inappropriate use of the POCA provisions to prosecute conduct sufficiently covered by substantive offences [49].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.uk/decided-cases/index.html