

Suspicion

Suspicion cannot be 'backdated' R v English (1989) 17 NSWLR 149 per Gleeson CJ at 151.

In Anderson v Judges of District Court NSW(1992) 27 NSWLR 701, AT 714 Kirby P (Meagher J and Sheller agreeing) said, '.... The word 'suspected' falls short of 'known' or even 'convinced' or 'shown'. In another context, it has been said that 'suspicion' is a state of conjecture or surmise when proof is lacking... The suspicion must, it is true, be 'reasonably' held

Tucs v Manley(1985) 62ALR460J Matheson (with whom J Jacobs agreed) stated hearsay evidence is permissible in considering whether there is a reasonable suspicion.

R v Chan(1992) 28 NSWLR 421 J Abadee.

- "... suspicion is not be confused proof."
- "... All that is needed is only some factual basis for the suspicion"

Lawful Search S21 LEPRA Locate Goods

Reasonable Suspicion Goods are stolen or unlawfully obtained. R v Madden 85 A Crim R 367 per CJ Hunt at CL

(Suspicion attaches to

goods - not the person)

R v Madden 85 A Crim R 367 per CJ Hunt at CL In determining whether the prosecution has made out its case, the court may have regard to the nature of the thing in question (the subject of the charge) the circumstances in which it was found in the defendant's custody and the behaviour of the defendant with respect to it, including any lies which he tells or evasion which he exhibits as to his custody of it and its provenances.

Not a proof that Defendant suspected the goods or that defendant had grounds to suspect. (Can be used for a defence). Not necessary to prove goods were unlawfully obtained. [D] must have 'knowledge of 'existence' of goods – not of their 'origin'

527C

- (1) Any person who:
- (a) has any thing in his custody,...[or]
- (b) has any thing in custody of another
- (c) or on premises, whether belonging to or occupies by himself or not, or whether that thing is there for his own use or the use of another
- (d) gives custody of any thing to person not lawfully entitled to possession of thing

which thing may be reasonably suspected of being stolen or otherwise unlawfully obtained, shall be liable on conviction before a local court

'any thing' includes unused railway tickets, betting tickets, ferns, or banknotes. Doesn't include money as 'currency' or 'credit'

Magistrate then decides if he has a "Reasonable Suspicion" at time of hearing evidence.

R v English(1989) 17 NSWLR 149

That "Suspicion must be" Beyond Reasonable Doubt

OBJECTIVE TEST-Quest of Law

Courts suspicion **not** based on goods being 'stolen' <u>but on</u> having a 'reasonable suspicion' that they are stolen or unlawfully obtained. Suspicion < belief.

Morris v Russell(1990) 100 FLR 386 at 392.

Suspicion is less than prima facie proof and less than proof beyond reasonable doubt (Morris v Russell) ibid at 392

Haken v Johnson NSWSC (15/10/1993) J Wood 'Magistrates decision must be made at the end of all the evidence.

R v Chan(1992)28NSWLR 421 J Abadee
'a combination of circumstances may be
sufficient to sustain a finding of satisfaction
of the proof of the offence, where
individually none would be sufficient'

IS COURT SATISFIED BEYOND REASONABLE DOUBT?

No Yes

[D] Can then 'rely' on statutory defence.

Not Guilty

STATUTORY DEFENCE If used, ONUS on Defendant

527C(2)

It is a sufficient defence to a prosecution for an offence under s(1) if the defendant satisfies the court that he had no reasonable grounds for suspecting that the thing referred to in the charge was stolen or otherwise unlawfully obtained.

Objective Test

Not based on defendant's suspicion. (subjective test) but on the grounds which defendant's belief is based. Ie (Is defendant's belief that he/she had no grounds for suspecting goods were stolen/unlawfully obtained Reasonable)

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Anderson v Judges of District Court NSW (1992) 27 NSWLR 701 P Kirby

701 P Kirby,
It is likely that in attempting to satisfy the Court that he 'had no reasonable grounds for suspecting that the thing... was stolen or otherwise unlawfully obtained', a defendant may show that the original suspicion was not well grounded or that the thing in question was lawfully in his possession'.

Wilful blindness – not a doctrine.

It is lawyers shorthand for 'a combination of suspicious circumstances and failure to make inquiry which may sustain an inference of knowledge'.

NO YES

BURDEN OF PROOF RESTS WITH POLICE –Beyond Reasonable Doubt of having a 'reasonable suspicion'.

ONUS OF STATUTORY DEFEENCE ON DEFENDANT –balance of probabilities.