CRIMINAL LAW—RECEIVING STOLEN GOODS—NO PRESUMPTION IN RECENT POSSESSION

In *Gaskins v. State*,[1] the defendant was convicted of receiving stolen goods[2] and appealed from the overruling of a motion for a new trial on the grounds that the court erred in its charge to the jury. The court charged the jury that: "Where one is found in possession of stolen goods immediately after the theft, the burden to prove that his was not a guilty possession rests upon him."[3] The court of appeals reversed, holding that such a charge is not applicable to one charged with receiving stolen goods.[4]

The gravamen of the offense of receiving stolen goods is the receipt of the goods with *knowledge* that they were stolen. There were two conflicting lines of Georgia cases on this particular point of law, that is, whether unexplained possession of recently stolen goods is sufficient for the jury to infer that the defendant received the goods with knowledge that they were stolen. The first line began with *Bird v. State*[5] where the defendant was charged with receiving stolen goods after he had purchased a $1.65 shirt for $.50 from the principal thief. There was no evidence showing knowledge on defendant's part that the shirt was stolen, nor did defendant offer any evidence. In reversing the conviction, the court of appeals said the law does not require the possessor of stolen goods to prove that he did not receive the goods knowing that they were stolen. The court went on to say that this rule would only apply to the principal thief and would be a sufficient basis for the jury to infer guilt.[6] The rule as stated in *Bird* is somewhat confusing but later cases applying the rule have clarified it.

In *Austin v. State*,[7] the court of appeals cited the *Bird* rule but upheld the defendant's conviction of receiving a stolen automobile. The defendant's testimony contained three conflicting statements as to how he came into possession of the automobile. The court said that knowledge and intent were subjective matters and could be inferred from the surrounding circumstances; and, if these circumstances were such

1. 119 Ga. App. 593, 168 S.E.2d 183 (1969).
2. GA. CODE ANN. § 26-2620 (Rev. 1969).
3. 119 Ga. App. at 593, 168 S.E.2d at 183.
4. *Id.*
5. 72 Ga. App. 843, 35 S.E.2d 483 (1945).
6. As authority for this rule the court cited *Suggs v. State*, 59 Ga. App. 394, 1 S.E.2d 39 (1939), *Arkwright v. State*, 57 Ga. App. 221, 194 S.E. 876 (1938) and *Ford v. State*, 162 Ga. 422, 134 S.E. 95 (1926).
7. 89 Ga. App. 866, 81 S.E.2d 508 (1954).

that they would cause the defendant to reasonably believe that the goods were stolen, they would be sufficient to authorize the jury to convict.[8] The court, relying on *Arkwright v. State*,[9] also said that contradictory statements made by defendant would be a sufficient basis to infer knowledge on his part that the goods were stolen. This qualified *Bird* to the extent that the jury could use unexplained possession of *recently* stolen goods in conjunction with conflicting testimony and circumstances surrounding the acquisition of the goods to infer knowledge on the part of the defendant that the goods were stolen.

In *Washington v. State*,[10] the defendant was convicted of knowingly receiving stolen goods (twelve automobile tires). Tires of the same dimension and description as the stolen tires were found by police in defendant's residence some three and a half months after they were stolen. The police officer testified that when the tires were located at defendant's house, the defendant said she did not know who they belonged to, that some man left them there. The defendant testified that she rented part of the house to somebody else and when asked by the police who he was, she could not remember his name. She subsequently looked up a receipt and found his name to be Joe Brown. The court of appeals ruled it was not error to refuse a charge that: ". . . the mere possession of goods *several months* subsequent to the time they were alleged to have been stolen and a failure to satisfactorily account for such possession will not alone authorize a conviction."[11] The court said that this charge was not applicable to the facts in the case and relied on the holding in the *Austin* case which allowed the jury to infer knowledge on defendant's part from his possession of *recently* stolen goods, *plus* his conflicting testimony as to how he came into possession of the goods. Thus, the *Washington* and *Austin* cases indicate that the rule of the *Bird* case would only apply where the state is relying *solely* on the defendant's recent possession of stolen goods to infer guilt. Inference that the defendant knew the goods were stolen is permissible where unexplained possession is coupled with conflicting testimony, or where the circumstance in which the defendant received the goods was such as to put him on notice that the goods were stolen.

This indication was further borne out in *Clarke v. State*[12] where the defendant was convicted of receiving stolen goods. Part of the goods

8. Birdsong v. State, 120 Ga. 850, 48 S.E. 329 (1904).
9. 57 Ga. App. 221, 194 S.E. 876 (1938).
10. 96 Ga. App. 844, 101 S.E.2d 885 (1958).
11. *Id.* at 846, 101 S.E.2d at 886.
12. 103 Ga. App. 739, 120 S.E.2d 673 (1961).

were found in his possession shortly after they were stolen. However, there was no evidence showing knowledge that the goods were stolen, nor any circumstances from which the jury could more than surmise that the defendant had such knowledge when he received the goods. The court of appeals held that recent possession alone is not sufficient for the jury to infer that the goods were received with knowledge that they were stolen. The court cited the *Bird* case for this authority. *Clarke* was only a headnote opinion, but it can be assumed that if the facts were such that they involved contradictory testimony, or circumstances that would put a reasonable man on notice that the goods were stolen, the court would have followed *Austin* and *Washington* and held the jury could infer knowledge.

It should be noted that none of the preceding cases has specifically mentioned a shifting of the burden of proof to defendant, except *Bird*, which stated that the rule would apply *only* in larceny cases. The court in these cases has spoken in terms of allowing the jury to infer from certain evidence that the defendant had the requisite knowledge that the goods were stolen. Allowing the jury to infer knowledge would not seem analogous to making out a prima facie case that is usually necessary for the burden to be shifted to defendants prior to the case going to the jury.

The other line of cases applying a contrary rule began with *Williams v. State*.[13] The defendant in *Williams* was convicted of knowingly receiving stolen goods. A witness identified the goods found in defendant's shoe shop as the same kind and brand as those that were stolen. There was also testimony that the same brand of goods had been sold to the defendant, and that the brand was sold generally by other merchants in the city. The trial court applied the rule first expressed in *Daniel v. State*,[14] and followed in *Wiley v. State*,[15] ". . . that possession of stolen property immediately after it is stolen, puts upon the possessor the burden of proving that his was not a guilty possession."[16] But the court of appeals reversed the conviction on the grounds that based on the evidence the jury could no more than surmise knowledge on the part of the defendant that the goods were stolen. From the facts and holding in this case it appears that the state failed to identify sufficiently the goods as the particular goods that were stolen. Excepting this, the conviction should have been upheld according to the rule of law cited by the court.

13. 16 Ga. App. 697, 85 S.E. 973 (1915).

14. 65 Ga. 200 (1880).

15. 3 Ga. App. 120, 59 S.E. 438 (1907). It must be noted in both *Daniel* and *Wiley* the defendant was charged with and convicted of larceny and not receiving stolen goods.

16. 65 Ga. at 201.

In *Artwright v. State*,[17] the defendant was convicted of receiving stolen goods, eight sacks of sugar. He purchased the sugar from the principal thief on the street at a price far below market value. The defendant testified that the thief told him the sugar was sweepings which his boss had given him in lieu of wages. The thief testified that he told defendant that the sugar was sweepings, but that he did not know to whom it belonged. The thief also testified that he had stolen the sugar. In sustaining the conviction, the court of appeals cited the rule that possession of recently stolen goods puts upon the possessor the burden of proving that his was not a guilty possession.[18] The court apparently based their decision on the rule in *Birdsong v. State*[19] and *Rivers v. State*,[20] which allows the jury to draw an inference of knowledge that the goods were stolen based on contradictory testimony and surrounding circumstances.

Gaskin expressly overrules *Arkwright* insofar as it contains language contrary to that opinion. But as previously noted *Arkwright* was cited in *Bird* and *Austin* for the proposition that contradictory statements made by the defendant along with recent possession of stolen goods were sufficient to uphold a conviction of receiving stolen goods. *Bird* and *Austin* are both upheld by *Gaskin*. Therefore *Arkwright* is only overruled in that part where it quotes the *Williams* rule as a valid statement of the law.

In *Nichols v. State*,[21] the defendant was convicted of receiving twenty gallons of stolen oysters. The principal thief testified that he carried the oysters to the market where the defendant worked and sold them to the defendant. The owner of the market denied that the principal thief had sold any oysters to anybody in the market. In reversing the conviction, the court of appeals cited the rule in *Austin* which allows the jury to infer knowledge from surrounding circumstances, and the rule in *Williams* which places the burden on the defendant to satisfactorily explain his possession of recently stolen goods. In applying these two rules to the evidence presented, the court concluded that the circumstances surrounding the alleged acquisition were not sufficient to infer knowledge that the goods were stolen. Also, it was not shown that the defendant was in possession of the goods shortly after they were stolen.

17. 57 Ga. App. 221, 194 S.E. 876 (1938).

18. Daniel v. State, 65 Ga. 200 (1880); Wiley v. State, 3 Ga. App. 120, 59 S.E. 438 (1907); Williams v. State, 16 Ga. App. 697, 85 S.E. 973 (1915).

19. 120 Ga. 850, 48 S.E. 329 (1904).

20. 108 Ga. 42, 44 S.E. 859 (1903).

21. 111 Ga. App. 699, 143 S.E.2d 41 (1965).

The court indicated that if it had been proven that either the disparity in purchase price and value of the goods were sufficient to put defendant on notice, or that the defendant was in possession of the goods shortly after they were stolen, the conviction would have been upheld.[22]

The instant case expressly overrules *Williams*, *Arkwright*, and *Nichols*[23] on this particular point and reaffirms the rule laid down in *Bird*. It appears from the majority opinion and the analysis on the cases following the *Bird* rule that in order to convict one of receiving stolen goods, the state will have to present more evidence than mere unexplained possession of the stolen goods.

In two special concurring opinions, it was urged that unexplained possession of recently stolen goods should be sufficient evidence for the jury to find the accused had received the goods with knowledge that they were stolen, but that the case should be reversed because the charge as stated created a presumption in law that the defendant had such guilty knowledge. These arguments are not without cogency, but the majority opinion seems to be the better position. Under this rule, unexplained possession of recently stolen goods can be used in conjunction with other evidence to infer guilty knowledge, but standing alone it will not support the inference. The majority opinion would appear to dispense with the confusion that has existed in the Georgia courts on this point.

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22. *Id.*

23. The court of appeals was unanimous in overturning the conviction in the instant case but two special concurrences were opposed to overruling the *Williams* case. One concurring opinion indicated that the rule was proper for both larceny and receiving stolen goods cases. But the rule should be so stated that the jury would understand that mere unexplained possession of recently stolen goods was a circumstance from which it could infer knowledge on the part of the defendant but did not create a presumption in law that the defendant had such guilty knowledge. The cases of *Gravitt v. State*, 114 Ga. 841, 40 S.E. 1003 (1902); *Lewis v. State*, 120 Ga. 508, 48 S.E. 227 (1904); and *Hawkins v. State*, 80 Ga. App. 496, 56 S.E.2d 315 (1949) were cited in support of this proposition. However, these cases all involved the principal thief and can easily be distinguished from a case involving receiving stolen goods.