THE OFFENCE OF RECEIVING STOLEN PROPERTY AND UNLAWFUL POSSESSION (NIGERIA, UNITED KINGDOM AND THE UNITED STATES) .

BY

DR. ALFRED ABHULIMHEN-IYOHA

CHIEF MAGISTRATE, EDO STATE JUDICIARY, BENIN CITY, NIGERIA.

PhD LAW, PhD INTERNATIONAL RELATIONS AND STRATEGIC STUDIES, MSC POLITICAL SCIENCE (INTERNATIONAL RELATIONS), MPA PUBLIC ADMINISTRATION, LLM LAW,PGDE EDUCATION, PGD LAW, BL, LLB HONS LAW, DIPLOMA CHRISTIAN THEOLOGY & PASTORAL COUNSELLING, +2348055968440.

2021

1.1 Introduction

The offence of receiving stolen property and unlawful possession of property is one that is closely tied to theft/stealing, albeit sharing the same nature with the latter offence. Indeed, Maimonides made the point more than 800 years ago when he quoted: "It is prohibited to buy from a thief any property he has stolen, such buying being a great sin, since it encourages criminals and causes the thief to steal other property. For if a thief finds no buyer, he will not steal[1].It has thus often been said that without receivers there would be no thieves, and although this statement is obviously not literally true, it is certainly the case that, without an efficient and profitable market in which stolen goods could be bought and sold, we would have a lot less thievery[2].

The offence of receiving stolen property and unlawful possession is one that is recognized and tried in many jurisdictions across the world, although the burden of proof solely rests on the prosecution to prove that the property in question is stolen and if the accused has de facto unlawful possession of said stolen property.

This paper seeks to examine the offence of receiving stolen property and unlawful possession in Nigeria while comparatively assessing other jurisdictions like the United Kingdom and United states.

1.2 The Offence of Receiving Stolen Goods and Unlawful Possession in Nigeria

In Nigeria the offence of receiving stolen property is treated as felony. Section 427 of the Criminal Code thus makes receiving anything which has been obtained through the commission of crime also a crime. It is immaterial that the property was not obtained through such a crime in Nigeria. This offence is itself geared towards discouraging stealing and protection of property. Under the Penal Code receiving stolen property is covered by section 316.

[1] S.P. Green (2011) *Thieving And Receiving: Overcriminalizing The Possession Of Stolen Property* :New Criminal Law Review, Vol. 14, Number 1, pps 35–54.: by the Regents of the University of California, Retrieved from the University of California website on the 18th of August 2019. http://www. ucpressjournals.com/reprintInfo.asp. DOI: 10.1525/nclr.2011.14.1.35.
[2] Ibid

The important elements in this offence are, the accused must have 'received' the property in question and must also have 'knowledge' of the fact that the property so received was stolen. The knowledge here is sometimes referred to as 'guilty knowledge'.

To constitute 'receiving', it is sufficient if you are in actual (physical) possession of the stolen property or if it can be deemed that you are in possession (by virtue of the fact that the stolen property is in possession of someone over whom you have control or authority), either alone or in conjunction with others, or if you have aided the disposal or concealment of such property.

Also it is important to note that before an accused person can be convicted for this offence, he must have received the stolen property. In ***R v Oni*** [3] it was held that in order to prove receiving, it is sufficient to show that the accused person has either alone or jointly with some other person, had the thing in his possession or has aided in concealing it or disposing it. If the accused has not aided in concealing or disposing of the property, then it must be shown that he had it in his actual possession which may be actual or constructive. Actual possession is when the accused himself has physical possession of the property and it is constructive when he holds it through a servant or other agent.

Knowledge that the property is stolen is required before the accused can be guilty of the offence. The accused will however be deemed to have such knowledge if judging from circumstances of the case, a reasonable man ought to have suspected the property in question to have been stolen, for example where the property in question is sold at a ridiculously low price.

Also it is the onus of the prosecution to prove that the property in question is stolen or obtained by means of an act constituting a felony or misdemeanor. It is also not sufficient to show that the goods had previously been stolen, they must continue to be stolen goods at the time when the accused person received them, Goods will cease to be stolen once they are recaptured by the true owner or by the police on his behalf.

Thus in ***R V Braimah***[4]guilty knowledge was inferred from the fact that the accused received stolen goods soon after a theft in the neighborhood and sent the goods to his brother to be sold 'at any price he thought fit'.

[3] (1949) 19 N.L.R 61
[4] (1943) 9 W.A.C.A 197

Also it must be shown that at the time of receiving the goods the accused knew they were stolen or obtained by means of an act constituting a felony or misdemeanor. This guilty knowledge may be proved either directly by the testimony of the thief himself, the confession of the accused person, or it may be inferred from suspicious circumstances surrounding the transaction of said property. In ***R V Adebowale***[5] it was held that in considering the question of guilty knowledge, the jury were entitled to take into account the fact that the gin was sold at approximately 10 per cent below the fixed price and was sold and transacted in unusual and suspicious circumstances.

Section 148(a) of the Evidence Act provides that a court may presume, inter alia, 'that a man who is in possession of stolen goods soon after the theft is either the thief or has received goods knowing them to be stolen, unless he can account for his possession'. The doctrine of recent possession is not limited to proof of guilty knowledge in cases of receiving stolen goods. Sometimes the proper inference to be drawn on proof that the accused was in possession of goods recently stolen may be that he was himself the thief. What amounts to recent for the purpose of the doctrine may vary according to circumstances of each case and the nature of the goods.

Thus in ***R V Opara***[6] it was held that the accused being in a street near the scene of a burglary having in his possession property taken from the house which was broken into two hours earlier had brought the inference on him of being the burglar. Also in ***R V Iyakwe***[7] it was held that possession of shoes stolen five months previously was evidence that the accused received them knowing them to have been stolen but not that he himself was the thief.

Thus under section 148 of the Evidence Act. If a person is in possession of stolen goods after its theft, that person is presumed to be either the thief or has received the goods in the knowledge that they have been stolen, except the person can give justifiable account of such possession. If stolen goods are planted in a man's house unknown to him he is not guilty of receiving, the receiving must be dishonest and that is to say, the receiver knowing the goods to have been stolen must intend to appropriate them to his own or to the use of some person other than the true owner [8].

[5] (1941) 7 W.A.C.A. 142
[6] (1943) 9 W.A.C.A 70
[7] (1944) 10 W.A.C.A 180
[8] C.O Okonkwo (2003), *Criminal Law in Nigeria* published by Spectrum Books Ltd. p. 321

Also where the stolen property is converted to another one, the person who received the converted property will not be guilty of the offence of receiving stolen property. E.g. where Sam stole a gold wristwatch sold it and from the proceeds gave Tola the sum of N2,000, Tola will not be guilty of receiving stolen property because what was stolen is not money.

The punishment of receiving stolen property ranges from imprisonment for seven to fourteen years, depending on the nature of property in question. The offence of receiving stolen property is aimed at protecting the interest of property owners in a third party and also to discourage stealing. These punishments are contained in section 427 of the Criminal Code. If the offence by means of which the thing was obtained is a felony, the receiver is liable to imprisonment for 14 years, except in cases in which the thing so obtained was postal matter, or any chattel, money or valuable security contained therein, in which case the receiver is liable to imprisonment for life. In any other case the receiver is liable to imprisonment for seven years.

1.3 The Offence of Receiving in the United Kingdom and United States and Canada

Section 22 of the English Theft Act of 1968 says that a person handles stolen goods "if (otherwise than in the course of stealing) knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realization by or for the benefit of another."

Under Section 354 of the Canadian Criminal Code, one commits "possession of property obtained by crime" if one "has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from . . . the commission in Canada of an offence punishable by indictment[9].

In the United Kingdom, unlike Nigeria stolen properties converted into another property can be deemed to as being stolen. Thus in ***D'Andrea v Woods***[10], two girls stole a quantity of savings stamps and converted them into cash, part of which they handed to the accused and who admitted that when he received the money he knew it to be stolen contrary to section 33 of the Larceny Act 1916. The conviction was right because section 46 of the same Act defined property to include not only the original property(stolen) but also any property into or for which the same has been

[9] S.P. Green (2011) op. cit. footnote 1
[10] (1953) 1 W.L.R 1307; 2 All. E. R. 1028; 37 Cr. App. R. 182

converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise. Furthermore under section 433 of the Queensland Criminal Code, a person who knowingly receives property into which stolen property has been converted in any manner whatsoever is guilty of the offence of receiving.[11]

Also in the United Kingdom as well as United States the offence of receiving stolen property and unlawful possession are treated separately, this was due to some negative factors that were rampant in the past for example during the eighteenth and nineteenth centuries, the sale and purchase of stolen property was becoming big business, the most spectacular evidence of which was the dramatic rise and fall of Jonathan Wild[12].

Until 1692, possessing stolen property was no crime at all. In that year, Parliament enacted legislation that subjected one who knowingly possessed stolen property to liability as an accessory after the fact, a less serious form of liability than being a principal in the first or second degree. The Industrial Revolution of the late eighteenth and early nineteenth centuries prompted yet more changes in the crime of receiving, culminating in the Larceny Act of 1827, which removed receiving "from its position as an appendage of theft and elevated [it] to the dignity of a separate substantive crime."[13]

Also in the United Kingdom the doctrine of recent possession is not limited to proof of guilty knowledge in cases of receiving stolen goods. Sometimes the proper inference to be drawn on proof that the accused was in possession of goods recently stolen may be that he was the thief himself. What amounts to recent for the purpose of the doctrine may vary according to the circumstances of each case and the nature of the goods.

Thus In ***R V Fallon***[14], where several persons committed robbery with violence and soon afterwards the accused was found in possession of property taken in course of the robbery it was held that the doctrine of recent possession may be relied on to show that the accused was one of the robbers but not that he was party to the use of violence.

[11] C.O Okonkwo (2003) op. cit. at footnote 8
[12] Jonathan Wild, also spelled Wilde (1682 or 1683 – 24 May 1725), was a London underworld figure notable for operating on both sides of the law, posing as a public-spirited crime-fighter entitled the "Thief-Taker General".
[13] S.P. Green (2011) op. cit. footnote 1
[14]The Times, May 7 1963, Ibid note 11

In the United States, 1827, a new legislation was enacted making receiving stolen property a free-standing crime, but one that was still subject to lesser penalties than larceny and other theft offenses. Twentieth century law took a different tack: Under the United States Model Penal Code, receiving stolen property was treated as interchangeable with various forms of theft and subject to the same penalties[15].

Under Section 223.6 of the MPC, a person is guilty of receiving stolen property "if he purposely receives, retains, or disposes of movable property of another knowing that it is has been stolen, or believing that it has probably been stolen. "Receiving," in turn, is defined as "acquiring possession, control or title, or lending on the security of the property"[16].

Until well into the twentieth century, receiving remained a distinct offense, subject to a lesser penalty than larceny, embezzlement, false pretenses, and other leading theft offenses. In mid-century, however, this began to change as well, in the United States. Under the Model Penal Code, receiving stolen property was treated as an alternative means of committing theft and therefore subject to the same penalty as the other theft and theft like offenses.

The supposed justifications for such consolidation were the same ones that underlay the movement toward consolidation of theft offenses more generally. The first was a concern that a defendant charged with one form of theft or theft-related activity might be able to avoid liability by arguing that he had actually committed a different offense. The second was offense definitions that were so narrow and technical that a defendant might be able to argue that his conduct fell "between the cracks" of what constitutes criminal conduct and thereby avoid liability entirely. In the present context, this meant that a defendant charged with theft could argue that he had actually committed receiving, and vice versa[17].

There is thus a significant variation in the way the offense is formulated in the various Anglo-American jurisdictions, Canada and U.S. The Canadian formulation is both broader and narrower than the MPC and Theft Act formulations. It is broader in terms of *actus reus*: the defendant need do nothing more than "possess" property (worth more than $5,000) that has been stolen in order to be guilty of the offense, whereas under the MPC the defendant must "acquir[e] possession,

[15] S.P. Green (2011) op. cit. footnote 1
[16] Ibid
[17] Ibid

control or title" of the stolen property, and under the Theft Act the defendant must "receive" the goods or undertake or assist in their "retention, removal, or disposal." The Canadian formulation is narrower, however, with respect to *mens rea*: the defendant must "know" that the property has been stolen, whereas under the Modern Penal Code and English Theft Act the defendant must "know" or "believe" that it has been stolen.

Also in the United States, the government must prove beyond a reasonable doubt that the person either received, concealed, stored, sold, or disposed of the stolen property.

To be guilty of the offense, a person must know that the property had been stolen, but he need not know that it was moving as, or constituted a part of, interstate commerce. The term "interstate commerce" merely refers to the movement of property from one U.S. state into another; and it is sufficient if the property has recently moved interstate as a result of a transaction or a series of related transactions that have not been fully completed or consummated at the time of the person's acts as alleged.

All US states also have laws regarding receipt of stolen property; however, there usually is no minimum dollar amount in many jurisdictions, and, of course, the requirement in Federal law regarding interstate commerce does not apply. Also, in many states (Ohio, for example), the burden to prove criminal intent is not as stringent or is nonexistent. This means that one can be charged with the crime - usually a minor degree of felony - even if the person did not know the item in question was stolen. In the Ohio case of ***State v. Awad*** [18]the goods did not need to actually be stolen, just represented as such

Receiving stolen property and possession of stolen property are treated as separate offenses in some jurisdictions. The distinguishing element is when the person knew that the property was stolen. If the person knew that the property was stolen at the time he received it, the crime is receiving stolen property. If the person did not know the property was stolen at the time she received it but found out after receiving possession, the crime is possession of stolen property.

[18] 520 P. 2d 1281 - 1974 -

The state must prove that the defendant received or possessed the property for a dishonest purpose. If, for example, the person acquired possession for the purpose of returning the property to its lawful owner, no crime has been committed.

Conclusion

A comparative analysis of the three jurisdictions in this paper highlighted some of the similar elements of the offence of receiving stolen goods and unlawful possession. However, there are also some dissimilar elements in United States and United Kingdom jurisdiction that can be reflected in the Nigerian Criminal code. Like the issue of converted stolen goods, in Nigeria a stolen property when converted is no longer considered a 'stolen' property, thus it is suggested that section 427 of the Criminal Code be amended to meet a type of situation as illustrated in the English case of ***D'Andrea V Woods*** supra. The offence of receiving and stolen property, is treated as a separate offence from actual theft in Nigeria