

# Goods in Custody

527C Crimes Act (NSW) 1900

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Goods in Custody and Proceeds of Crime are special because they are the only two offences for which the onus of prove is reversed. For every other offence, the police carry the burden of proving every element of the offence. But for these two offences the police need only show a reasonable suspicion. The burden is then cast onto the Accused to prove they were not aware that the property was unlawfully obtained.

Every lawyer needs to understand this shift in the burden of proof in order to advise and represent their clients effectively. This article aims to assist legal practitioners appearing in the Local Court of NSW.

## Definitions

Section 527C Crimes Act makes it an offence to have:

1. 'any thing',
2. in your 'custody' (or the custody of another) or 'on premises'
3. that may reasonably be suspected of being stolen or otherwise unlawfully obtained.

'Any thing' can include bank notes but not money in a bank account. The thing itself must be suspected of being stolen and not the proceeds of the stealing. So, if you steal a TV and sell it for \$50, then the correct charge is Proceeds of Crime under s193C as the \$50 itself is not stolen.

Custody is the 'immediate de facto control or charge of the article in question'.<sup>1</sup> The defendant must have custody at the time of arrest.<sup>2</sup> However, the reasonable suspicion may arise after the time of arrest.<sup>3</sup>

## Reasonably Suspected

It is the opinion of the magistrate, not the arresting officer that is important.<sup>4</sup> The magistrate must be satisfied beyond reasonable doubt that the goods are reasonably suspected of being stolen or unlawfully obtained.<sup>5</sup> This determination is made on the basis of all the evidence available at the time of the hearing. This includes evidence that was not available to the police at the time of arrest.

Expert evidence based on hearsay has been admitted and relied on to found the reasonable suspicion.<sup>6</sup>

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<sup>1</sup> *Ex parte McPherson* (1933) 50 WN (NSW) 25

<sup>2</sup> *R v English* (1989) 17 NSWLR 149

<sup>3</sup> *R v Abbrederis* (1981) 36 ALR 109

<sup>4</sup> *Parker v Todhunter* (1987) 26 A Crim R 169

<sup>5</sup> *Ex parte Patmoy; re Jack* (1944) 44 SR (NSW) 351

<sup>6</sup> *Tucs v Manley* (1985) 62 ALR 460

The suspicion must attach to the goods, not the defendant.<sup>7</sup> 'Suspicion and no more' is not sufficient. The suspicion must have a reasonable foundation.<sup>8</sup> It may not be enough to show that there are competing lawful inferences.<sup>9</sup> But there must be an intention to use the goods in a way inconsistent with the owner's use.<sup>10</sup>

However, the court does not have to find that the goods were obtained by larceny or some other specific offence.<sup>11</sup> Nor does it have to find that the defendant acted dishonestly.<sup>12</sup> Likewise, it is not necessary for the court to find that the goods were stolen or unlawfully obtained in NSW.<sup>13</sup>

## Currency

Bank notes were considered in *Anderson v Judges of the District Court*<sup>14</sup> and again in *R v Chan*.<sup>15</sup> The reasonable suspicion need only apply to a portion of the money.<sup>16</sup> But the suspicion must attach to the actual banknotes. Otherwise, the correct charge is Dealing the Proceeds of Crime (s193C Crimes Act).

## Defence

Section 527C(2) provides that:

*It is sufficient defence for the defendant to a prosecution under subsection (1) if the defendant satisfies the court that he or she had no reasonable grounds for suspecting that the thing referred to in the charge was stolen or unlawfully obtained.*<sup>17</sup>

So, the burden is on the defendant to satisfy the court on the balance of probabilities (Briginshaw), not that the goods are not unlawfully obtained, but merely that he had no reasonable grounds for suspecting that.<sup>18</sup>

I'm available every day if you have any interesting issues.

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<sup>7</sup> *O'Sullivan v Tregaskis* [1948] SASR 12

<sup>8</sup> *R v Grace* (1930) 30 SR (NSW) 158

<sup>9</sup> *R v Chan* (1992) 28 NSWLR

<sup>10</sup> *R v Neilands* (Ducker 4/4/91 u/r)

<sup>11</sup> *R v Carter* (NSWCCA, 9 March 1978 unreported)

<sup>12</sup> *Purdon v Dittmar* [1972] 1 NSWLR 94

<sup>13</sup> *R v Porter* [2004] NSWCCA 353

<sup>14</sup> (NSW) (1992) 27 NSWLR 701

<sup>15</sup> (1992) 28 NSWLR 421

<sup>16</sup> *Edens v Cleary* [1975] 1 NSWLR 278

<sup>17</sup> *Tegge v Caldwell* (1988) 15 NSWLR 226

<sup>18</sup> *Ex parte Patmoy; re Jack* (1944) 44 SR (NSW) 351