

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2016-004-008965
[2018] NZDC 1809**

NEW ZEALAND POLICE
Prosecutor

v

SHENG SUN
Defendant

Hearing: 24 January 2018
Appearances: V Hix for the Prosecutor
L Cordwell for the Defendant
Decision: 2 February 2018

RESERVED DECISION OF JUDGE A SWARAN SINGH

[1] The charge you face is that: between 5 August and 2 September 2016, you received 50 cartons of [manuka honey] valued at \$30,000 from persons unknown. The [manuka honey] that you received had been stolen.

[2] The Prosecution case is that when you received the [manuka honey] you were reckless as to whether or not the [manuka honey] had been stolen.

Witnesses

[3] Statements of [witness 1, witness 2], Constable [1] and [witness 3] were read by consent. [Your marketing manager] and the Officer-in-Charge, [the Detective Constable], read their Statements and then gave oral evidence.

[4] Admission of Facts under section 9 of the Evidence Act 2006 confirmed that on 8 June 2016 you had withdrawn \$15,000 in cash from your bank account.

[5] At the end of Prosecution case, you elected not to give or call evidence, as is your right.

[6] Exhibit 1 contains two Tax Invoices confirming [the manufacturer] had delivered 50 and 30 cartons of honey to [the burglary victim's] company. Exhibits 2 to 4 are photographs of [manuka honey] found at your business premises.

Onus & Standard of Proof

[7] The onus is on the Prosecution to prove the charge to the requisite standard of beyond reasonable doubt.

Issues Not In Dispute

[8] At the outset, Defence Counsel confirmed that the following issues are not in dispute, namely:

- [Manuka honey] that was found in your possession was stolen in a burglary. On 5 June 2016, the business premises of [the victim] was burgled. Items taken in the burglary included: one pallet containing 30 cartons of [manuka honey type 1] 500g. Each carton had 12 jars. The total value was \$10,929.60. The second pallet contained 50 cartons of [manuka honey type 2] 1 kg jars. There were 6 jars in each carton. The total value was \$22,128.00.
- You accept that you had *received* the stolen [manuka honey] found at your premises. You accept you had possession and control of it.

Evidence

[9] The stolen [manuka honey] was supplied by [the manufacturer] to [witness 1] of [name deleted]. [Witness 1] also has a business under the name of [name deleted].

[10] [The manufacturer's] records show the batch number for 50 cartons was GMH3982. The batch number for the 30 cartons was GMH4234.

[11] [The manufacturer] had also supplied [manuka honey] to Belong Health Limited, your business at [address deleted], Mt Roskill. You also have a business by that name at [address deleted], Mt Eden. [The manuka honey] supplied to your company had totally different batch numbers, namely: FMH3785, GMH4233 and FMH3690.

[12] Constables [1 and 2] were involved in Operation Resolve, which was created to investigate and resolve ongoing crime spree of burglaries and theft of properties.

[13] On 2 September 2016, they searched your home and business premises. At [your Mt Roskill business premises], [Constable1] located 96 jars of 500g Manuka Honey with batch number GMH4234 and 166 jars of 1 kg Manuka Honey with batch number GMH3982.

[14] That morning your business premises at [Mt Eden] was also searched. On the self, [Constable 1] located Manuka Honey, which matched the batch number of the Manuka Honey that had been stolen in the burglary. He took photographs of the items *in situ* before seizing them.

[15] No evidence was adduced in Court as to the number of jars seized from [Mt Eden] premises. The photographs show a number of stolen jars of honey on the shelf. Some jars of honey may have already been sold.

[16] On 2 September 2016, [the Detective Constable] spoke to you and made Notebook entries. You told him that 2-3 months ago Gary came to you and offered to sell 50 boxes of honey. You had known Gary for approximately 10 years. You stated that your [marketing manager], had agreed to purchase it, "as with me". Previously, Gary had offered to sell you "5 bottles or so" and you had "said no".

[17] In cross-examination, Detective Constable conceded that the question he had asked to which you replied “Paid Gary \$24,000 cash for the 50 boxes of honey” may have been confusing. He accepted that there was “definitely a language barrier and the understanding”. Hence, there was room for confusion about the above question and your response. His evidence in response to my query was: that he may have asked “How much were you going to pay for it not how much have you paid for it?”. In the circumstances, I disregard your above response.

[18] Apart from that confusion, [the Detective Constable] confirmed that the entries in his Notebook were “pretty accurate”.

[19] You then stated that you had “paid \$15,000 for the honey unsure exactly how many, approximately 50 boxes. Usually for this amount of honey, 50 boxes for 100+ and 250+ pay \$25,000 (GST \$4,000) inclusive”.

[20] You told [the Detective Constable] that the honey you received “had not been exported, we tried to sell it local”. Shortly after you had paid Gary \$15,000 for the honey, Gary returned and “demanded another \$10,000. Said price is cheaper, wants more for the honey”. You told him that you did “not want to pay that”. You then asked Gary for your money back in return for the honey that he had supplied to you. Gary refused to return the money. You told [the Detective Constable] that Rima was not Gary but that you had seen Rima before- he had come to your shop and house before. One time Rima and Gary had come together to the business address. You read and signed the Notebook, confirming it was true and correct.

[21] The seized jars of Manuka Honey were returned to [the burglary victim].

[22] [Your marketing manager] had been your Purchasing manager at the relevant time. He no longer works for you.

[23] His evidence was that you purchased two brands of honey, one of which is [the manufacturer brand]. The purchase of this brand was made directly from [the manufacturer]. For 500g jar Belong Health paid \$30.36 and for 1 kg jar it paid \$84.64. Usually, it was sold at “roughly 15 to 20% margin”.

[24] [Your purchasing manager's] role was to make orders, which had to be approved by you. It was paid for by you from your business bank account.

[25] His staff had alerted him that "someone is trying to sell us product". He met a person who had been to the shop before "trying to sell us product". He was not aware of anything that your company had bought from him before.

[26] [Your purchasing manager] gave a description of a male in his 50's who he thought was half Maori and half Caucasian and whose "clothing appeared to be in a rough condition".

[27] That person told [your purchasing manager] that "he had some decent honey and was offering to sell it to us at very attractive pricing" or words to that effect.

[28] That person showed [your purchasing manager] a carton which contained six containers of [manuka honey]. Upon checking the label and scanning the barcode, it appeared to [your purchasing manager] that it was genuine [brand name deleted] product.

[29] [Your purchasing manager] did "not remember the exact price the male offered us". However, he remembered "checking it against our usual purchase price and what he was offering us was about 40% cheaper".

[30] As you were responsible for making the decision, [your purchasing manager] called you. You spoke to this person on phone. That person wished to speak to you face to face and left the shop. [Your purchasing manager] was unsure when that person returned to the shop- he thought it was the next day. You and that person left the shop to discuss. [Your purchasing manager] did not know what was discussed by you with that person. He was not aware about the deal. Few hours later honey was delivered to the shop. Same male person delivered around 20 cartons. He saw that person arrive. [Your purchasing manager] did not deal with that person as he was not in charge of receiving deliveries.

[31] Later the same day, about “20 cartons, possibly more than 20” were delivered by two different males.

[32] [Your purchasing manager] “did not see any purchase orders, invoices or other documents relating to the sale. This is very unusual as I would always see the purchase details in my work. This is the only time that a purchase had been made in this way where I have not seen any paperwork for it.”

[33] In cross-examination, [your purchasing manager] confirmed that your company had been buying Manuka Honey from [name deleted] company. He stated that your company would get “may be 25%, 20 to 25%” discount for the Manuka Honey it bought.

Recklessness

[34] In *Rhys Michael Cullen v The Queen* [2012] NZCA 413 at paragraph 23, CA stated that:

Generally, the concept of the term “recklessness” is regarded, in New Zealand criminal law, as the conscious taking of an unreasonable risk. A complete indifference about whether goods were or were not stolen would, itself, be enough. It seems reasonably clear that if someone receives property, the source of which is unknown, then a conscious risk is taken in determining not to make further inquiries.”

Prosecution Submissions

[35] Prosecution submits that you had received more than 96 jars of 500g Manuka Honey with batch number GMH4234 and 166 jars of 1 kg Manuka Honey with batch number GMH3982. This is supported by [Constable 1’s] evidence that he found [the manufacturer’s brand] honey in your business premises at [Mt Eden], matching the batch numbers that he was looking for. He took photographs of the items he had seized. However, there is no evidence of how many jars of Manuka Honey had been seized at that premises.

[36] Prosecution submits that from the circumstances in which you received the [manuka honey], the Court would be in a position to draw an inference that you were reckless in receiving it.

Defence Submissions

[37] Counsel submits that you did not act recklessly in receiving the [manuka honey]. Counsel submits that the value of stolen honey that was found at your business premises totalled \$16,964.80- shy of \$17,000. Therefore, you had paid a price which cannot be considered as gross undervalue. Even if the value was \$24000, payment of \$15,000 was 40% discount.

[38] You had not tried to remove any markings such as label or batch numbers.

[39] Payment by cash may be an IRD issue. It would not be sufficient to draw an inference of recklessness from cash payment.

[40] No attempt was made to hide the items you had received.

[41] Counsel submits that in view of the foregoing submissions, there is insufficient evidence from which Court can draw an inference of recklessness on your part.

Findings

[42] Having carefully considered all the evidence, I make the following findings:

[43] You received the [manuka honey] in the following circumstances:

- There was more [manuka honey] than 96 jars of 500g Manuka Honey with batch number GMH4234 and 166 jars of 1 kg Manuka Honey with batch number GMH3982. This is confirmed by the jars of honey found in your business premises at [address deleted], Mt Eden. Some jars of honey may already have been sold.
- You had told Detective Constable that usually you would have paid \$25,000, GST inclusive. You also told him that Gary returned to demand a further \$10,000 as he had sold it “cheaper”. From what you

told [the Detective Constable], I draw an inference that the honey you had received was worth well in excess of \$15,000. More likely, it was worth at least \$25,000, if not more.

- Your company had been buying [manuka honey] from [the manufacturer]. What was supplied to you had batch numbers.
- Orders were placed by [your purchasing manager], after obtaining your approval.
- The person you had bought it from was not selling from an established business.
- No documentation such as order, invoice or payment was sighted by the Purchasing Manager. [The purchasing manager] considered this to be very unusual. He had not experienced a transaction in such a manner previously.
- Payment was in cash.
- Whilst payment by cash is not in itself sufficient to draw an inference of recklessness, such payment in combination with above factors does lead to a logical inference that you were completely indifferent about whether the [manuka honey] you had received were stolen or not.
- Having dealt with the supplier you would have been aware that the particular brand of honey was being supplied to you by the manufacturer. In combination with above factors, dealing with a person with no credentials as a supplier would have been enough to alert you that the [manuka honey] that you received had or may have been stolen.
- I find that in receiving the [manuka honey] without making further inquiries you took a conscious risk, which was unreasonable, amounting to recklessness.

Verdict

[44] In view of my findings, I find you GUILTY as charged.

A Swaran Singh
District Court Judge