

**IN THE DISTRICT COURT
AT HUTT VALLEY**

**CRI-2015-096-002120
[2016] NZDC 3941**

NEW ZEALAND POLICE

Prosecutor

v

NUIA PULOKA

Defendant

Hearing: 7 March 2015

Appearances: Sergeant N Ford for the Prosecutor
AA McCubbin-Howell for the Defendant

Judgment: 7 March 2016

ORAL JUDGMENT OF JUDGE P J BUTLER

[1] This case was part heard on 18 January this year. I recorded my findings of fact on the afternoon of that day, because I knew there would be a considerable delay before the decision could be delivered.

[2] The defendant is charged with theft pursuant to s 219 (1)(b) Crimes Act 1961 as at a date between 2 November 2014 and 3 February 2015. Specifically the charge reads, “Dishonestly and without claim of right dealt with a motor vehicle, namely a Subaru Legacy Blitzen, motor vehicle registration number [registration number deleted], with intent to deprive the owner, Matthew Hayter, permanently of that motor vehicle after obtaining possession of the said motor vehicle.”

[3] The onus of proving all the essential elements of this offence are on the prosecution that the standard proof is proof beyond reasonable doubt, in respect of

each essential element. The defendant made no statement to the police, nor did he give or call evidence. I infer nothing adverse against him because of that.

[4] The essential elements of this charge are:

- (1) The defendant acted dishonestly; definition of dishonesty is contained in s 217 Crimes Act 1961.
- (2) The defendant acted without claim of right; claim of right is defined in s 2.
- (3) The defendant intended to deprive the owner of the motor vehicle permanently of that motor vehicle. In this respect s 219 (2)(a) is relevant.
- (4) The obtaining of a motor vehicle by the defendant must be proved as an essential element. The obtaining need not have been wrongful, and in some cases may have been achieved with the consent of the owner.
- (5) The defendant dealt with the motor vehicle, this means more than mere activity.

[5] By s 9 Evidence Act 2006 the following matters were admitted by the defendant:

- (1) The blue Subaru Blitzen, located at [address deleted], by Constable Alexander, is the one that is the subject of this charge, reported stolen by Matthew Hayter.
- (2) The front bumper located at the defendant's address on 13 July 2015 by Detective Nathan Smith came from that Subaru Blitzen.

[6] The first prosecution witness was Matthew Hayter. He had owned the Subaru Blitzen but it was stolen from outside his address on the night of 2 November 2014. He duly reported this to the police. Some eight months later the police contacted him.

[7] In evidence he referred to some of the photographs in exhibit 1. Photos 27 to 41 showed what remained of his vehicle, which had been road worthy when he last saw it, on 2 November 2014. These photographs show a blue vehicle with two rear wheels which has literally been cut in two pieces. Mr Hayter said in his observation that the Subaru Legacy Blitzen vehicle was rarely seen in New Zealand, especially one that was coloured metallic blue. He said that his vehicle, before it was stolen, was insured for \$6000. Of course the admitted facts bolstered Mr Hayter's view that the remnants of the vehicle found at [address deleted] were those of his vehicle.

[8] The second prosecution witness was Tara Te Huia. In July 2015 she lived at [address deleted]. She had a standalone garage at her property. By reference to the photographs she said the garage shown in photos 2, 3, 4 and 5, was her garage, which is where most of what was left of Mr Hayter's vehicle were located by the police on 13 July 2015.

[9] Ms Te Huia could not recall who actually deposited the vehicle in her garage, although she said she had an arrangement with the defendant that a vehicle could be left in her garage in return for him providing her with weekly help with her rent. She thought the car was his and he was going to fix it up. The car was in her garage for some time. He dismantled it and it was she who finally rang the police about it. She recalled little about day-to-day events concerning the vehicle, but described sounds that she had heard as something like a saw being used at some stage.

[10] In cross-examination she said she thought the car had been towed to her garage. Certainly it could not have been rolled into her garage without front wheels and there are no front wheels on the vehicle as displayed by the photographs. She was not sure when the car first arrived.

[11] Detective Nathan Smith went with Constable Alexander to Ms Te Huia's [address deleted] property on 13 July. Detective Smith, prior to joining the police, had spent 13 years in the motor vehicle industry. He said that the Subaru Legacy Blitzen especially of the type and colour of this vehicle, were rare in New Zealand.

[12] Constable Alexander on 13 July 2015 went to the defendant's address at [address deleted] and seized two bumpers, one from the front and one from the rear, and the admitted facts show that the front bumper he seized came from the vehicle located at [address deleted], which in turn was the vehicle reported stolen by Mr Hayter.

[13] Thus and to this point the facts that Mr Hayter's vehicle was stolen on or about 2 November 2014, and was taken to [address deleted], where it was dismantled and part of that vehicle was then taken to the defendant's address at [address deleted].

[14] Next the defendant is linked with [address deleted] by his association with Ms Te Huia and the financial arrangements he had made with her for storage of a vehicle. He is also linked because part of that vehicle was located at his address in [address deleted]. The vehicle must have been mobile when taken to the [address deleted] address. By 13 July 2015, the date of its discovery by the police, it was not. In fact, it constituted a little more than a shell of the vehicle with the rear wheels still attached.

[15] To revert then to the essential elements of this charge, and a consideration of whether each and every one of them has been proved beyond reasonable doubt, first, did the defendant act dishonestly? The definition in s 217 of that refers to a belief that an act was done without the express or implied consent or authority from a person entitled to give such consent or authority. That person in this case was clearly the owner of the motor vehicle, Matthew Hayter. He reported to the police that his car has been stolen from outside his address. There is no evidence from which it

could be inferred that he gave consent or authority for anyone to use or deal with his property in any way whatsoever.

[16] Nor is there any evidence from which it could be inferred that the defendant believed there was such express or implied consent or authority. I find this first essential element to be proved to the required standard.

[17] Second, did the defendant act with claim of right. Again there is no evidence expressed or implied that could be taken as giving rise to such a claim.

[18] Thirdly, did the defendant intend to deprive Mr Hayter permanently of that property? Section 216 (2)(a) of the Act is relevant. By dismantling the vehicle, the defendant ensured that it could not be returned to Mr Hayter in the same condition as it was when it was taken from outside his property on 2 November 2014. Not only was the vehicle dismantled, but its component parts were divided over two separate properties. I have no doubt that the defendant intended to deprive Mr Hayter permanently of his property and the vehicle.

[19] Fourthly, did the defendant obtain possession of the vehicle prior to dismantling it? Ms Te Huia's evidence is conclusive and the condition of the vehicle belies any suggestion that it came into her garage in the same condition as it was when the police found it. I find this essential element to be proved beyond a reasonable doubt.

[20] Fifthly, did the defendant deal with the vehicle? This requirement seems to mean more than mere inactivity in respect of the vehicle. Here, however, I am quite satisfied that the defendant was instrumental in having the vehicle cut into many pieces in Ms Te Huia's garage. That constitutes a dealing in my view.

[21] Having satisfied myself that every essential element of the charge has been proved by the prosecution to the required criminal standard, I find the charge to be proved.

[22] Mr Puloka, I convict you of the charge, remand you to 8 April next at 11.45 on the morning of that day for probation and reparation report, and the pre-sentence report can look at electronically-monitored options as a form of sentence for you. Thank you; your bail continues; you can stand down.

P J Butler
District Court Judge