1959
Jun. 8
*Jun. 25

WILLIAM CLAYTON GRAHAM .....APPELLANT;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law—Possession of stolen bonds—Whether guilty knowledge—Evidence—Explanation—Whether reasonably true—Whether inconsistent with any rational explanation—Criminal Code, 1953-54 (Can.), c. 51, s. 296.

The appellant was convicted under s. 296 of the *Criminal Code* of having in his possession stolen bonds "knowing that they were obtained by the commission in Canada of an indictable offence". On June 26 and July 15, 1958, the appellant had cashed at a bank in Windsor, five bonds which had been stolen. His explanation was that he had received the bonds from a man named Moore whom he had met at a bar in Detroit. Moore told him that he had some bonds which he wished to cash but that he could not cross the border because he was having trouble with the Canadian Immigration authorities. Moore offered to pay him $100 for each bond that he cashed, and the appellant received this payment and accounted to Moore for the rest of the proceeds.

Held: The appeal should be dismissed and the conviction affirmed.

While there were certain expressions in the reasons of the trial judge which might indicate that he thought there were elements of probability in the story told by the accused, on a weighing of the story as a whole and after consideration of it, step by step, he rejected it decisively in his conclusions that the explanation could not be reasonably true, that it could not be believed by anyone and that there was nothing before him whereby he could possibly believe it. There was therefore no misdirection in the consideration of the accused's defence.

The trial judge, furthermore, did not direct himself that if he disbelieved the explanation he was bound to convict. On a consideration of all the evidence, the trial judge reached the conclusion that it was inconsistent with any rational explanation other than the guilt of the accused. He reached and stated the conclusion that the accused "could not possibly not have known" that the bonds were stolen.

APPEAL from a judgment of the Court of Appeal for Ontario, affirming the conviction of the appellant. Appeal dismissed.

E. P. Hartt, for the appellant.

W. C. Bowman, Q.C., for the respondent.

The judgment of the Court was delivered by

*PRESENT: Kerwin C.J. and Cartwright, Fauteux, Martland and Judson JJ.

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JUDSON J.:—The appellant was convicted under s. 296 of the *Criminal Code* at Windsor, Ontario, in the County Court Judge's Criminal Court on two charges of having in his possession stolen Government of Canada bonds "knowing that they were obtained by the commission in Canada of an indictable offence". These bonds had undoubtedly been stolen from a branch of the Bank of Montreal in the Province of Quebec on April 22 or April 23, 1958, during the course of a break-in in which the safety deposit boxes were looted. On June 26 the appellant cashed one of these stolen bonds having a face value of $1,000 at the Windsor branch of the Provincial Bank of Canada and on July 15, 1958, at the same bank, he cashed four more bonds of the same denomination. He was arrested on August 27, 1958. He was duly cautioned and made no statement but two days later, on August 29, he did make a statement to the police in which he gave an explanation similar to the one which he gave at the trial. His explanation was that he had received the bonds from a man named Moore whom he had met in a bar in the city of Detroit. He said that Moore explained that he had the bonds which he wished to cash but could not cross the border because he was having trouble with the Canadian Immigration authorities. He offered to pay the appellant $100 for each bond that he cashed and the appellant said that he received this payment and accounted for the rest of the proceeds to the person from whom he had received the bonds.

The sole theory of the defence was that the accused had offered an explanation of his possession of the bonds which might reasonably be true, and the main ground of appeal to this Court was that the learned trial judge had misdirected himself in his consideration of this defence. The duties of a trial judge in connection with this defence are well defined and they have been authoritatively stated by this Court in *Richler v. The King*[1], in the following paragraph at p. 103:

> The question, therefore, to which it was the duty of the learned trial judge to apply his mind was not whether he was convinced that the explanation given was the true explanation, but whether the explanation might reasonably be true; or, to put it in other words, whether the Crown

[1] [1939] S.C.R. 101, 4 D.L.R. 281, 72 C.C.C. 399.

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had discharged the onus of satisfying the learned trial judge beyond a reasonable doubt that the explanation of the accused could not be accepted as a reasonable one and that he was guilty.

The error assigned by counsel for the appellant is that the learned trial judge did actually find that the explanation given by the accused might reasonably be true but that, in spite of this, he proceeded to convict because the accused should have known that the bonds were stolen. If this were so, the appeal would succeed because an approach such as this would place an onus on the accused of offering an exculpatory explanation going beyond the bounds laid down by the authorities. I am, however, satisfied that the reasons for judgment of the learned trial judge are not open to this construction. While there are certain expressions in the reasons which might indicate that he thought there were elements of probability in the story told by the accused, on a weighing of the story as a whole and after a consideration of it, step by step, he rejected it decisively in the following conclusion:

> The explanation that the accused has given on the stand, by his actions and all that he has done all through these transactions, could not reasonably be true, and the explanation could not be believed by anyone, and there is nothing before me whereby I could possibly believe it, and that being the case, all I can do is find the accused guilty as charged.

It was also argued for the appellant that the learned trial judge erred in law in that he directed himself that if he disbelieved the explanation of the accused he was bound to convict. In my opinion the learned judge did not so direct himself. He appears on a consideration of all the evidence to have reached the conclusion that it was inconsistent with any rational explanation other than the guilt of the accused. He clearly reached and stated the conclusion that the appellant "could not possibly not have known" that the bonds were stolen.

I am, therefore, of the opinion that there was no misdirection in this case, that the explanation offered was submitted to the proper tests and properly weighed and that the prosecution on ample evidence has discharged the onus as stated in the *Richler* case.

I would dismiss the appeal. Time spent in custody pending this appeal should count as part of the term of imprisonment imposed by the trial judge.

Appeal dismissed.

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*PRESENT: Kerwin C.J. and Locke, Cartwright, Martland and Judson JJ.