

Steroids, Robbery, and s.355 of the Criminal Code

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In this Blawg I will attempt to send myself to jail. Well not literally. I will recount the time I was charged with possession of stolen property under \$5000. I will focus the mens rea aspect of the charge to highlight the need for additional requirements to this charge.

My story takes place in 2009 when I was a 19-year-old working at the Maryland bar (you know it will be good when the Maryland is involved). At the time, I had been working at the bar for probably 4-5 months, slinging buds to the 2 people a night who dared to show up to this hazardous establishment. One Thursday, payday and a popular bar-night, I headed over to the Maryland to pick up my check for the week's toil. Upon entering the bar, I noticed my manager (Bob) sitting down having some drinks, a short stocky fellow who liked to partake in sticking needles in himself to get nice and strong. I approached him to get my check when he asked if I knew of any good bars to go to on a Thursday night. Just his luck, Thursday was my bar-night where I went to Club 3D and drank with my friends, a ritual I had carried out for some time. I told him about it and decided that it would be a good idea to bring him along—it was not.

We arrived at the bar not too late in the night. I proceeded to introduce Bob to my friends and the staff members whom I was friendly with. After an hour at the bar, I felt like going home. My house was about a five-minute drive from the bar. I offered Bob a ride home because I felt bad for ditching him, but he told me it would be ok. So, I left. 5 Minutes later, I get a phone call from Bob, asking me to come back and drive him home, his voice heavily distressed. I thought nothing of it—people usually got into fights at that bar, so I figured he just got beat up. Not the case. I drove to the bar and waited for him outside. Bob stood up and signaled me over from

some bushes in someone's yard across the street. I drove over, he jumped in my car and told me to "shut the f*** up and drive.

Club 3D is located on Portage at the far westside of the city. Bob lived in the Maryland bar, about a 20-minute drive between my place and his. We drove in silence for some time until Bob pulled a bag out from under his sweater, reached into it, and pulled out a stack of cash not unlike the money phone Evander Kane had in Vegas. He threw the stack of cash at me and told me to keep silent. Bob later told me what had happened. Right after I left, he noticed an employee collecting money from the VLTs. So, he thought it would be a dandy idea to tackle her, grab the money bag, and run out of the bar.

When we arrived back at the Marland, I followed him upstairs into his room, where he proceeded to tell me that he would kill me if I told anyone. Being a 19-year-old boy, I acted totally stoic. Just kidding, I was so scared that he noticed this and flipped out on me. He ripped his shirt off in a bout of aggression, calling me a 'nark' while pounding his gorilla chest. I freaked out, ran, and somehow escaped the building. I drove home and quickly checked my phone. I realized quickly that I had missed well over 100 phone calls and messages. I realized I needed to do something, but at the same time, I wanted to keep the stack of money that lay on my car floor. I was stuck in some sort of ethical liminal space. Thankfully, I managed to smarten up; I went to the police and surrendered myself to them.

What followed was a fun-filled 10 hours of being investigated by the police. I explained everything to them, and they reciprocated by charging me with possession of stolen goods under

\$5000¹ (I think the wad of cash had roughly \$4000 dollars of notes in it, though I wasn't able to count it at the time). My father would write a letter that managed to get my charges dropped. Regardless, I want to look at this charge and examine how someone in my position could potentially go to jail for having possession of stolen goods under such anomalous circumstances.

The Mens rea aspect of the crime requires that "the culprit knew or should have known that any part of the subject-matter was obtained by 'commission in Canada of an offence punishable by indictment' or 'an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.'"² I was fully aware that the money came from an act punishable by indictment. Because proving that I knew the money came from an illegal act does not require showing a desire to keep the money, I don't believe knowledge is enough to prove guilt.

In order to avoid someone being put in jail for being forced into a situation similar to mine, I believe proof of this offence should require proving that the accused had a *manifest intent to maintain possession* of said goods. Returning to my story, had I not returned the money, it would have been clear that I wanted to maintain possession over it. However, I managed to overcome my youthful ignorance and turn the money over. I am lucky my father is a brilliant man who was able to write a letter emphasizing my behaviour, which resulted in my charges being dropped. However, someone else may not have the same luck as I. For this reason, I believe that this provision of the code should be altered to require a manifest intent to maintain

¹ *Criminal Code*, R.S.C., 1985, c. C-46 at s. 355(b).

² Dostal, Peter J. "Possession of Stolen Property (Offence)." *Possession of Stolen Property (Offence) - Criminal Law Notebook*. The Canadian Criminal Law Notebook. Accessed December 1, 2019. [http://criminalnotebook.ca/index.php/Possession_of_Stolen_Property_\(Offence\)](http://criminalnotebook.ca/index.php/Possession_of_Stolen_Property_(Offence)).

possession, instead of relying on the sympathies of the Courts. Such a change could add protection against those in weird situations as I was in.

