

UK Legal News Analysis

## Possession of a False Identity Document--A Strict Liability Offence?

LNB News 20/07/2011 80

### Published Date

20 July 2011

### Jurisdiction

UK

### Related Legislation

Identity Cards Act 2006

### Related Cases

R v Unah [2011] All ER (D) 97 (Jul)

### Abstract

**A recent case has examined whether the Crown is required to prove a defendant actually knew an identity document found in their possession was false. Selena Masson talks to Sunil Rupasinha, criminal law barrister of London-based chambers Five St Andrew's Hill, about whether the judgment imposes a burden on the Crown which was not intended by Parliament**

### Analysis

In *R v Unah*, the Court of Appeal quashed the defendant's conviction for possession of a false identity document, and held that, as a matter of statutory construction, the offence under the Identity Cards Act 2006, s 25(5) was not one of strict liability. However, the mere fact that a defendant had no knowledge of the fact a document was false did not amount to a defence of "reasonable excuse".

Sunil Rupasinha, who specialises in false identity cases, says this judgment is significant because it resolves a frequently occurring issue in these types of prosecutions: "Does the Crown have to prove that a defendant knew or believed a document to be false in a case of simple possession of a false document contrary to the Identity Cards Act 2006, s 25(5)? The answer is 'yes' but only if it is raised by the defence as part of a reasonable excuse for possession of the document."

Rupasinha adds that s 25(5) prohibits simple possession of a false document, but does not specify that the Crown has to prove the defendant knew or believed the document to be false (unlike with the offence under s 25(1) where such knowledge or belief must be proved). "The appeal in this case was predicated on the basis that the legislature did not intend to create a strict liability offence--so that even someone who had no idea a document in his possession was false (and on sound grounds) would nevertheless be 'guilty' of the offence," he explains.

He continues: "The Court of Appeal's judgement was that as the section did not stipulate such a requirement none existed (especially as such a requirement was set out in s 25(1) but was omitted from s 25(5)). However, s 25 does afford a defendant a defence of 'reasonable excuse'. Where the defendant's excuse is that, given the circumstances under which he came into possession of the document he had no basis for believing the document to be false, this is capable of being a reasonable excuse for possession of the document--a defence which must be left to the jury.

"Therefore," observes Rupasinha, "although there is no requirement in s 25(5) to prove a defendant knew or believed the document to be false, if the defence of reasonable excuse involves the claim that the defendant had no idea of the false nature of the document, the Crown will, in practice, have to prove the defendant did have such knowledge or belief."

Rupasinha points out that some might argue this judgment imposes a burden on the Crown which was not intended by Parliament. "However, the reality is that, whether it was intended or not, the Crown will now have to prove 'guilty' knowledge whenever the defence of ignorance of the falsity of the document is raised as part of the reasonable excuse," he says, adding: "Once again the Court of Appeal has proved its liberal credentials ensuring the Crown has to prove 'guilty knowledge' even although the section plainly and deliberately omits such a requirement."

Prosecuting agencies will doubtless be resigned to the expectation of an increasing frequency of cases in which the defence of reasonable excuse is based on professed ignorance of the false nature of documents. "The defence minded, on the other hand, will take the view that if the Court of Appeal had reached any other view the offence under s 25(5) would have, in effect, amounted to a strict liability offence. Either way, one can expect more contested cases in the future," concludes Rupasinha.

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