LOW-VALUE SHOPLIFTING: THE HYBRID OFFENCE

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Low-value shoplifting inhabits a procedurally unique and potentially ambiguous position in our criminal justice system. Pursuant to section 176 of the Anti-Social Behaviour, Crime and Policing Act 2014, which inserts s.22A into the Magistrates' Courts Act 1980 ['MCA'], low-value shoplifting is 'triable only summarily'. Despite this, a defendant charged with low-value shoplifting can, by the same section, elect to be tried on indictment. The Act is silent on how this paradoxical piece of legislative drafting might work in practice, leaving the matter of interpretation to the courts.

The Law

Low-value shoplifting is defined as theft, from a shop, stall or similar, where the offender was or purported to be a customer or potential customer and the value of the goods does not exceed £200 (s.22A(3) MCA). If a defendant faces multiple charges of low-value shoplifting, the court should consider the aggregate value of the goods when determining whether the charges fall within s.22A MCA (ss.22A(4) and *R v Maxwell* [2017] EWCA Crim 1233).

Sub-sections 22A(1) and (2) of the Act provide for the court's procedural approach to the offence:

1. Low-value shoplifting is triable only summarily.
2. But where a person accused of low-value shoplifting is aged 18 or over and appears or is brought before the court before the summary trial of the offence begins, the court must give the person the opportunity of electing to be tried by the Crown Court for the offence, and, if the person elects to be so tried –

    a. Subsection (1) does not apply, and
    b. The court must send the person to the Crown Court for trial of the offence.

Interpretation

There is an inherent contradiction in a defendant being able to elect trial on indictment for what would otherwise be a summary only offence. IndeedTin 2017the Court of Appeal has considered the application of section 22A MCA at least twice. In *R v Chamberlain* [2017] EWCA Crim 39 the Court ruled that where a defendant elects trial on indictment, the Crown Court's sentencing powers are not limited to those available to the Magistrates' Court. Instead, when a defendant exercises the right to elect Crown Court trial, pursuant to ss.22A(2), s22A(1) ceases to be applicable. The Crown Court is not bound by the constraints placed on the Magistrates' Court. But, until the defendant elects, the reasoning behind the decision in Chamberlain implies the offence is summary only.

In *R v Maxwell*, the Court of Appeal gave expression to the implications in *R v Chamberlain*. As in *R v Chamberlain*, Treacy LJ delivered the judgment of the Court, which held that until s.22A(1) was 'displaced' by the defendant electing Crown Court trial, low-value shoplifting is a summary only offence [paragraphs 14 – 22]. This has several jurisdictional implications. For instance, as was considered in *Maxwell*, where a defendant is tried on indictment for various matters, but has not elected for charges of low-value shoplifting to be tried in the Crown Court, those charges cannot be

included on the indictment. The significance is clear, low-value shoplifting is a summary only offence until and unless the defendant elects for trial on indictment.

The technicalities of whether the offence is a summary only, or indictable can have significant ramifications for a defendant. Until a defendant elects trial on indictment, they are entitled to the procedural safeguards and benefits afforded to those charged with summary only matters. An obvious benefit is the restriction on the court's sentencing powers. The Crown, too, is restricted by the classification of the offence as summary only. For instance, the prosecution must lie an information for a summary only matter within six months from the date the alleged offence was committed (s.127 MCA). Where the Crown is out of time, the court has no jurisdiction to hear the matter. Experience suggests it is precisely these technical, but decisive details that run the risk of being overlooked in the Magistrates' Courts.


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