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State of Utah v. Paul Koyd Hurlburt : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent, :

-vs- :

PAUL KOYD HURLBURT,

Defendant-Appellant. :

Case No.
14727

RESPONDENT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a conviction on the charge of receiving stolen property valued at \$100.00 or less.

DISPOSITION IN THE LOWER COURT

The case was heard before Edward Sheya, Judge of the Seventh Judicial District Court, Grand County, sitting with a jury. At the close of the State's case, defendant moved to dismiss the action based upon insufficient evidence. Judge Sheya denied the Motion to Dismiss. After completion of the trial the jury returned a verdict of guilty. Defendant moved for a new trial; the motion was denied.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the verdict affirmed and the rulings of the trial court upheld.

STATEMENT OF THE FACTS

Respondent accepts appellant's Statement of Facts except to exclude any reference to facts alleged in the Affidavit of Cydney Osanna. The affidavit was submitted to the trial court in support of defendant's post-trial motion for a new trial. The Osanna Affidavit contains facts not before the trial court, and thus not considered by the jury in reaching its verdict. The motion for a new trial was denied by the trial court.

ARGUMENT

POINT I

THE EVIDENCE ESTABLISHED THAT APPELLANT RECEIVED STOLEN PROPERTY KNOWING OR BELIEVING IT PROBABLY HAD BEEN STOLEN, AND THUS THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION TO DISMISS AT THE CLOSE OF THE STATE'S CASE.

Appellant bases his appeal solely on the failure of the trial court to grant defendant's motion to dismiss for insufficient evidence at the

close of the State's case. Appellant argues that the State failed to prove beyond a reasonable doubt one element of the offense of receiving stolen property; namely, that he knew or believed that the property had been stolen.

In ruling upon appellant's motion to dismiss at the end of the State's case, the trial court found that there was sufficient evidence presented by the State from which the jury could find defendant guilty of the offense of receiving stolen property. The court correctly noted that if there is sufficient evidence to support a verdict of guilty, a motion to dismiss at the end of the State's case must be denied and any questions of fact resolved by the jury.

The statute under which appellant was convicted is Utah Code Ann. § 76-6-408(1) (Supp. 1975) which provides as follows:

"A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it probably has been stolen, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof."

The jury in the instant case brought back a verdict of guilty based upon a finding that the State established each element of the offense of stolen property, as Jury Instruction Number 2 required.

Appellant argues that the State failed to establish that he received, retained, or disposed of the property of another "knowing that it has been stolen, or believing that it probably has been stolen." Jury Instruction Number 2 informed the jury that it must be convinced beyond a reasonable doubt that at the time defendant received, retained, or disposed of the property of another he either knew the property had been stolen, or in the alternative, believed it probably had been stolen.

As appellant correctly notes, the phrase "believing it probably has been stolen" as set forth in Utah Code Ann. § 76-6-408, withheld constitutional attack in a recent Utah Supreme Court case, State v. Plum, 552 P.2d 124 (Utah 1976). The Plum court found that the statute was sufficient to inform those who would be law abiding of the conduct expected of them. The trial court in the Plum case was careful to instruct the jury that each element of the crime of receiving stolen property must be established beyond a reasonable doubt.

Jury Instruction Number 2 in the instant case complied with the requirement of Plum v. State, supra. The jury thus found beyond a reasonable doubt that appellant either knew or believed that the property probably had been stolen. The jury was not required to make a finding distinguishing whether appellant had definitive knowledge that the property had been stolen, or whether appellant believed the property probably had been stolen. The two alternatives in the element of knowledge were presented to the jury as a single material allegation in the offense of receiving stolen property.

Appellant reviews case law from Utah and several other states to distinguish certain factors present in receiving stolen property cases, particularly those facts which were found pertinent on the question of knowledge. After identifying common factors found in receiving stolen property cases appellant attempts to argue that since those common factors were not present in his case, the element of knowledge has not been established.

For example, appellant points out that there was a two month period of time between the date the tool box was stolen and the date he pawned it, that he was not in possession of the stolen tool box

During the two month period, that he used his own
pawning the tool box and finally, that
had a logical, uncontroverted explanation
possession of the tool box.

It is true that the above factors
to be relevant on the question of
particular receiving stolen property
has ever held that any one or more
factors must be present to uphold a
defendant either knew or believed
had probably been stolen.

seeks to explain away the fact
false statement to the sheriff when
about his possession of the tool
was held in United States v. May, 430
(1970) that a defendant's contradictory
statements give rise to the justifiable inference
that he knew a check was falsely made, satisfying
the knowledge requirement of the federal statute
under which the action was brought.

Further, in People v. Malouf, 135 Cal. App.
2d 697, 287 P.2d 834 (1955) the court found that
possession of stolen property, accompanied by
suspicious circumstances, will justify an inference
that property was received with knowledge that the

property had been stolen. Certainly appellant's vague and contradictory statements as to his possession of the tool box created a suspicious circumstance that would justify the jury in finding that appellant either knew or believed that the tool box probably had been stolen. While appellant also correctly notes that mere possession of stolen goods does not in and of itself establish the absence of knowledge, the May and Malouf cases indicate that possession of stolen property accompanied by an evasive or contradictory explanation of that possession may be sufficient to establish that appellant either knew property was stolen or believed it probably had been stolen.

In Barnes v. United States, 93 S.Ct. 2367, 412 U.S. 837, 37 L.Ed.2d 380 (1973) the jury was instructed that:

" . . . possession of recently stolen property, if not satisfactorily explained, is ordinarily a circumstance from which you may reasonably draw the inference and find, in the light of the surrounding circumstances shown by the evidence in the case, that the person in possession knew the property had been stolen."

The United States Supreme Court upheld the above jury instruction stating that the evidence established that the petitioner possessed stolen property. In that

case stolen Treasury checks payable to persons
petitioner did not know, and the record reflected
no plausible explanation for his possession consistent
with innocence. Justice Powell found that the
inference set forth in the jury instruction satisfied
the reasonable doubt standard.

The record in the instant case reflects
that Sheriff Carl Davis questioned appellant
as to how he acquired the tool box that had been
found in defendant's name at the Five C's pawn
shop. Appellant answered that he woke up one morning
finding the tools in his livingroom, that he had
found them in his apartment the night before and one
of his friends might have left the tools there. No
further explanation was given by appellant regarding
his possession of the tools.

At the time the Motion to Dismiss was made at the
close of the State's case, the trial court had heard
testimony establishing the fact of the theft of a tool
box, the fact that appellant had pawned the tool box
at the Five C's pawn shop, and a vague explanation
given by appellant to the Sheriff concerning appellant's

possession of the tool box. The Barnes, Malouf and May cases certainly support the decision of the trial court to deny appellant's motion to dismiss at the end of the State's case; the State had established possession of stolen property by appellant and a vague explanation concerning his possession of the tool box. These factors were sufficient to permit a finding of guilty knowledge, thus requiring the trial court to deny appellant's motion to dismiss.

The appellant then presented his case consisting of his own testimony. The case went to the jury and based upon the evidence, including testimony of all the witnesses, a verdict of guilty was returned.

CONCLUSION

Appellant presents a single point on appeal. He argues that the court erred in denying his motion to dismiss at the conclusion of the State's case. Based upon the above cited argument and authority, the trial court had sufficient evidence before it to deny the motion to dismiss, continue the course of the trial, and submit the case to the jury. The jury then weighed all the evidence and

appellant guilty of the offense of receiving
property, knowing or believing it probably
stolen. Therefore, respondent requests
judgment of the lower court be affirmed.

Respectfully submitted,

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