

1978

State of Utah v. Larry Kyle Stephens and Troy Johnson : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

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STATE OF UTAH, :
Plaintiff-Respondent, :
-vs- : Case No.
LARRY KYLE STEPHENS : 15384
and TROY JOHNSON, :
Defendants-Appellants. :

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE FIRST
JUDICIAL DISTRICT COURT, IN AND FOR
CACHE COUNTY, STATE OF UTAH, THE
HONORABLE VENYO CHRISTOFFERSEN, JUDGE

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

LARRY KYLE STEPHENS
and TROY JOHNSON,

Defendants-Appellants.

Case No.
15384

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a conviction of theft, Utah Code Ann. § 76-6-501 (1953), as amended.

DISPOSITION IN LOWER COURT

The defendants were found guilty by the First Judicial District Court, in and for Cache County, the Honorable VeNoy Christoffersen, sitting without a jury.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the decision of the lower court affirmed.

STATEMENT OF THE FACTS

Respondent accepts appellants' statement of facts but would add the following facts for the Court's consideration:

At the trial, a handwriting expert compared exemplars taken from statements made while in custody by appellants Stephens and Johnson with a check and receipt given by Shamrock Coin Shop for 75 mink pelts. The expert testified that the signature "Mike Day" on the receipt was in the same handwriting as the signature of Troy Johnson (T.153). The expert further testified that the endorsed signature "Mike Day" on a check from Shamrock Coin Shop was the same handwriting as that of Kyle Stephens (T.153-154).

Upon his arrest by Officer Alan Nelson, appellant Kyle Stephens stated, "I may be guilty of two of those but not all four." (T.176).

It was established at trial that grading mink pelts is an inexact art, that it is a matter of opinion, and that opinions differ greatly even among experts (T.9, 47,62,185,189,196,197).

ARGUMENT

POINT I

THERE WAS SUFFICIENT EVIDENCE PRESENTED FOR THE TRIAL COURT TO FIND THE DEFENDANTS GUILTY BEYOND A REASONABLE DOUBT ON CHARGES OF THEFT.

To support the argument that there was insufficient evidence to warrant a finding of guilt beyond a reasonable doubt on charges of theft, appellants rely most heavily on the alleged failure of the State to identify the missing property. At issue herein is almost exclusively a question of fact, and thus respondent's brief will of necessity repeat the pertinent facts.

Although appellants state that there was only minimal consistency in identifying the missing pelts, the record clearly shows that grading mink pelts is a most inexact art. The identification of the missing mink pelts by the owner is within the general framework of the later identification by the pawnshop owner, the somewhat different classification given by the Wilkinson Pelting Service and, later, by the Seattle Fur Exchange.

It is critical to here point out that it is undisputed that certain furs were transferred by the pawnshop owner Williamson to the pelting service and then the

very same furs were consigned to the Seattle Fur Exchange. The pawnshop owner, the pelting service employee, and the fur exchange grader each classified the mink pelts according to his own system, each grading somewhat differently. Yet appellants argue that the State's case fails because the owner of the missing pelts graded his mink somewhat differently from the pawnshop owner who purchased 75 mink pelts just five days after the owner was relieved of 75 mink pelts.

Turning to the record in the instant case, Dennis Mathews, the son of the owner of the pelts, identified the missing property as 67 pastel male mink pelts, and eight demi-buff male mink pelts for a total of 75 mink pelts divided into three bags (T.61). Dennis Mathews also testified that he had done the initial grading according to his own determination, that he could have been mistaken as to the sex of the pelts, and that there is great disagreement among mink men as to shades (T.61-62). If Dennis Mathews was unsure of a shade when grading he consulted his father (T.61).

Grant Mathews, the owner of the missing pelts, had earlier testified that he does not grade very closely

because professional graders later have to match the pelts into one garment, and that he simply is not skilled in grading (T.9).

Only five days later, 75 mink pelts were delivered to the Shamrock Coin Shop in Pocatello, Idaho. Mr. Williamson, the owner, had been purchasing furs only about one year (T.79). He testified that Troy Johnson, appellant herein, whom he identified in court, came to his shop offering to sell 75 male mink pelts packed "real full" into two bags (T.82). Mr. Williamson described the pelts in the following way:

"They were a light--they were a kind of a light colored--I called them a kind of a platinum color. I don't know. A color of their own, really."
(T.83-84).

Williamson later described three of the pelts as black, saying they were "very dark, looked black" (T.84). Throughout his testimony Williamson used the terms "light" and "dark" to describe the 75 pelts brought to his shop.

Mr. Williamson then sent the pelts to Wilkinson Pelting Service where the pelts were graded as 6l pastel, 11 demi-buff and three other mutations (Exhibit 9). Wilkinson consigned the furs to Seattle Fur Exchange for sale where the pelts were graded with trade names such as autumn haze, emba pastel, demi-buff and lutetia (Exhibits 10 and 11; T. 186-187).

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Even appellants' own expert witness, a mink rancher for thirty years, testified that "Well, I've found that I could never get a grader to agree with me" (T.185). He further testified that an experienced grader would not make the mistake of classifying a pale beige as a pastel, "I wouldn't think" (T.188).

It is clear that a close look at the transcript in the instant case simply does not support appellants' claim that the 75 mink pelts arriving at the Shamrock Coin Shop on December 9, 1976, were not properly identified as the 75 mink pelts taken from Grant Mathews' shed on December 4, 1976. The 75 minks were graded broadly by Mathews and his son, and certainly broadly graded by the owner of the Shamrock Coin Shop who had been in the business of selling furs for only about one year. Nevertheless, the general coloring of the 75 male mink pelts identified by the owner and the purchaser are the same. The number is the same. Thus, the identification of the furs meets the standard required under Utah law.

In addition, the facts show that appellants Stephens and Johnson were employed by Grant Mathews about 15 days and helped in getting ready to pelt (T.14-15). Appellants were dismissed by Mathews when they failed to

show up for work and had not called (T.20). Appellants explained that they had been in jail (T.21). Mathews refused to rehire appellants because he had replaced them with other workers (T.21).

The facts also show that while working for Mathews, appellants both had access to the place where the minks were pelted and stored (T.17,19). Appellant Johnson was identified in court by Shamrock Coin Shop owner Williamson as one of two persons who came to his shop offering to sell 75 male mink pelts (T.81). A handwriting expert identified the signature "Mike Day" endorsed on a check from the Shamrock Coin Shop as that of Kyle Stephens (T.153-154). The expert further testified that the signature "Mike Day" written on a receipt from Shamrock Coin was the writing of Troy Johnson (T.153).

In addition, a check made out to "Mike Day" from the Shamrock Coin Shop (Exhibit 8) was cashed on December 10, 1976, at the Commercial Security Bank (T.120). The check was authorized by an employee who testified that she had known Troy Johnson for quite a few years and had a dating relationship with him on the date the check was cashed (T.119).

Appellants cite State v. Romero, 554 P.2d 216 (Utah 1976), for the following proposition:

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"When the only proof of presumed facts consists of circumstantial evidence, the circumstances must reasonably preclude every reasonable hypothesis of defendant's innocence, but this is not controlling when only part of the evidence is circumstantial." Id. at 219.

Appellants do not mention the underlined sentence from Romero. In the instant case, the identification of appellant Johnson by the owner of Shamrock Coin Shop and the identification of appellants' handwriting as that on the check and receipt from Shamrock Coin Shop provides direct evidence linking appellants to the theft of the 75 mink pelts. Further, Kyle Stephens made an admission to Officer Nelson upon his arrest. When told the charges, Stephens said, "I may be guilty of two of those but not all four," (T.176). This admission constitutes direct evidence on the charge of theft.

The recent case of State v. Taylor, No. 15068, filed October 6, 1977, affirmed a theft conviction in a case in which no evidence was offered at trial to link the defendant with the theft of a gun. The prosecution relied upon the defendant's attempt to pawn the gun as proof of the offense of theft. The Supreme Court found

that the Utah Theft Statute consolidated several offenses into a singular theft charge thereby requiring only the pleading of the general offense of theft. Certainly the evidence in the instant case meets the standard of proof found sufficient in State v. Taylor to support a conviction under Utah Code Ann. § 76-6-501 (1953), as amended.

Appellants rely heavily upon State v. Hall, 105 Utah 151, 139 P.2d 228 (1943), reversed on other grounds, 105 Utah 162, 145 P.2d 494, in support of their claim that the State failed to identify the mink pelts at issue herein. Respondent would submit that spark plugs are quite different from mink pelts. The mink pelts sold to Shamrock Coin Shop were identical in number and general coloring to the pelts taken from rancher Mathews, whereas neither the quantity nor kind of spark plugs stolen in Hall could be identified.

The above discussion of the facts and pertinent law clearly support a finding of guilt beyond a reasonable doubt as to both appellants on the charge of theft.

POINT II

THE IDENTIFICATION OF APPELLANTS IN CONNECTION

WITH THE THEFT OF 75 MINK PELTS WAS SUFFICIENT TO SUPPORT

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THE VERDICT.

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The facts which support identification of appellants as perpetrators of the theft of 75 mink pelts from the ranch of Grant Mathews have been thoroughly discussed under Point I.

Those facts can be summarized as to each of the appellants as follows:

1. Troy Johnson was identified in court by Dan Williamson, owner of Shamrock Coin Shop (T.81). Troy Johnson's handwriting was identified as the same handwriting which signed the name "Mike Day" on a receipt from Shamrock Coin Shop (T.153). Troy Johnson had been employed by Grant Mathews for 15 days, knew the pelting and storage procedure of the ranch, and was terminated against his will (T.20-21). The check was cashed at the Commercial Security Bank by a teller who testified she dated Troy Johnson (T.119).

2. Kyle Stephens stated that "I may be guilty of two of those, but not all four" (T.176), when he was placed under arrest. Kyle Stephens had also worked for Grant Mathews for 15 days before November 27, 1976, until his employment was terminated (T.20-21). Kyle Stephens' handwriting was identified by an expert as the same

handwriting which signed the name "Mike Day" on a check from Shamrock Coin Shop in payment for 75 mink pelts (T.153-154). The testimony of the handwriting expert was not rebutted by appellants.

The above facts clearly identify appellants Stephens and Johnson in connection with the theft at issue herein. The participation of both appellants was established beyond any reasonable doubt, and the trial court properly found.

CONCLUSION

Based upon the aforementioned argument and authority, respondent respectfully urges this Court to affirm appellants' convictions on the charge of theft.

Respectfully submitted,

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