1997

City of Orem v. Sarah Jude Price : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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CITY OF OREM,	:	BRIEF OF APPELLANT
Plaintiff,	:	
vs.	:	
SARAH JUDE PRICE,	:	Case No. 970234-CA
Defendant.	:	

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Appeal from an order of the Fourth Judicial District Court of Utah County, Orem Department dated the 20th day of March, 1997.
Priority: (2)

Hon. John H. Backlund

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TABLE OF CONTENTS

JURISDICTIONAL STATEMENT. 1

STATEMENT OF ISSUES 1

STATUTES WHICH ARE DETERMINATIVE. 2

STATEMENT OF FACTS. 2

SUMMARY OF ARGUMENT 3

THE PROSECUTION MUST PROVE BEYOND A REASONABLE DOUBT THAT DEFENDANT IS GUILTY OF THE CRIME CHARGED. 4

WAS THE TRIAL COURT CORRECT IN DISCOUNTING COMPLETELY THE TESTIMONY AND PHYSICAL EVIDENCE OF DEFENDANT. 5

CONCLUSION. 5

TABLE OF CASES AND STATUTES

§78-2(a)-3(2)(d) and (f), U.C.A., (1953), as amended. 1

§76-6-602, U.C.A. (1953), as amended. 4

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JURISDICTIONAL STATEMENT

This is an appeal from a judgment of guilty dated September 30, 1997, entered by Judge Joseph I. Dimick in the Fourth Judicial District Court of Utah County, Orem Department. Jurisdiction to hear this appeal is pursuant to §78-2(a)-3(2)(d) and (f), U.C.A., (1953), as amended.

STATEMENT OF ISSUES

The issue presented in this appeal is whether the prosecution showed beyond a reasonable doubt that the Defendant was in fact guilty of both counts of the crime of disorderly conduct.

STATUTES WHICH ARE DETERMINATIVE

§76-6-602, U.C.A. (1953), as amended

STATEMENT OF FACTS

The City of Orem alleges that the Defendant committed the crime of retail theft on August 9, 1996 in the Wal-Mart store located in Orem, Utah, by concealing various items in a backpack, leaving a tent set up for a tent sale, and not paying for the items concealed in her bag.

At trial, the prosecution's witness testified that the Defendant concealed five dog anchors, a desk riser and a pink garment. She kept the items on top of her bag until she was about to leave, when she stuffed the items down into her bag and proceeded to exit the tent after paying for some other items at the cash register. Defendant stopped to ask the clerk if he could watch her cart while she went to make a phone call from the pay phone. After being told no, that this was against store policy, Defendant continued about fifty feet out into the store parking lot, where the witness stopped Defendant.

Defendant testified that she was headed back into the store itself, where she had some more shopping to do. She had not paid for all of the items, and also had brought the garment so she could find something that matched it; it did not belong to Wal-Mart, and

so could not be guilty of shoplifting it. Despite the discrepancy in the testimony of the store security officer and the Defendant, the trial judge stated that he could not completely discount the testimony of the prosecution's witness, and found the Defendant guilty.

SUMMARY OF ARGUMENT

The Court found the Defendant guilty based on the fact that Defendant's own testimony was not supported by other evidence, or believable. However, Defendant claimed at trial that she left the tent sale in order to make further purchases at the main Wal-Mart store. She was emphatic in stating that she was not going in the direction of the parking lot (she does not drive), and was headed into the store. She further testified that she did not intentionally conceal any items in her bag; as noted in the testimony of the prosecution's witness, the items were sitting on top of the bag for quite some time before Defendant left the store. Defendant denied stuffing the items down in her bag, and claimed that they slipped down inadvertently.

POINT I

THE PROSECUTION MUST PROVE BEYOND A REASONABLE DOUBT THAT DEFENDANT IS GUILTY OF THE CRIME CHARGED.

The United States Constitution provides that, in order for a Court to find a defendant guilty of a crime, there must be proof beyond a reasonable doubt. The specific elements of the crime of retail theft which must be proven and which are at issue here are outlined in §76-6-602, U.C.A. (1953), as amended, as follows:

> A person commits the offense of retail theft when he knowingly:
>
> (1) Takes possession of, conceals, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the retail value of such merchandise.

In the present case, the testimony of Defendant was very emphatic that had no intention to deprive Wal-Mart of any of their products. There is a discrepancy as to what the prosecution's witness observed, but there were sufficient facts to support Defendant's claim that she was actually headed back into the store to make further purchases. First, it is unreasonable to believe that Defendant would draw attention to herself by asking the cashier to watch her cart if, in fact, she intended to steal some items from the tent sale. Further, the prosecution's witness did

not state which direction Defendant was going when she left the tent, only that she was about fifty from the tent.

POINT II

WAS THE TRIAL COURT CORRECT IN DISCOUNTING COMPLETELY THE TESTIMONY AND PHYSICAL EVIDENCE OF DEFENDANT?

The Court of Appeals views the evidence in the light most favorable to the trial court, meaning that there is a presumption that the trial court's decision was correct. However, when the evidence does not support the Court's decision, this Court can, and should, reverse the decision.

In the present case, the Court could have found the Defendant guilty of retail theft only if the Court completely discounted the testimony of Defendant, and relied completely on the prosecution's sole witness. If any credence was given to Defendant's testimony, a reasonable doubt that she had the intent to take the property from Wal-Mart without paying for it could have been found.

CONCLUSION

Based on the above points, Defendant believes that it is clear that the prosecution did not meet its burden of proving the Defendant guilty of the crime of retail theft beyond a reasonable doubt. Accordingly, the decision of the trial court should be reversed on both counts.

DATED this 17th day of August, 1998.

MCCULLOUGH, JONES & IVINS, L.L.C.

Randy M. Lish

Randy M. Lish
Attorney for Defendant

ADDENDUM

No addendum to this brief is necessary.

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 1998, I mailed a true and correct copy of the foregoing Brief of Appellant to Robert Church, Orem City Prosecutor, 97 E. Center, Orem, UT 84057.

Randy M. Lees