

2008

Layton City v. Michelle Lee Spurgers : Reply Brief

Utah Court of Appeals

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April 30, 2010

CCO

IN THE UTAH COURT OF APPEALS

LAYTON CITY,)	
)	
Plaintiff / Appellee,)	Case No. 20081019-CA
)	
v.)	
)	
MICHELLE LEE SPURGERS,)	
)	
Defendant / Appellant.)	

REPLY BRIEF OF APPELLANT

Appeal from Sentence, Judgement, Commitment signed by the district court on January 13, 2009, and accordingly entered that same day in the Second District Court, Davis County, the Honorable David Connors, presiding

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UTAH APPELLATE COURTS

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ARGUMENTS

I. THE RECORD AND MARSHALED EVIDENCE DEMONSTRATE THAT THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH MS. SPURGERS' CONVICTION FOR RETAIL THEFT BECAUSE THERE WAS NO EVIDENCE PRESENTED AT TRIAL THAT SHE TOOK, CARRIED AWAY, OR TRANSFERRED ANY STORE MERCHANDISE.

Layton City argues that Ms. Spurgers failed to both marshal the evidence and present the facts in a light most favorable to the verdict. See Brief of Plaintiff and Appellee, pp. 7-10.¹ This argument is without merit for the reasons set forth below.

When challenging the sufficiency of the evidence, a "[d]efendant has the burden of marshaling all the evidence that supports the [court's conviction], and then showing that, when viewed in the light most favorable to the [conviction], the evidence is insufficient.'" *State v Hayes*, 860 P.2d 968, 972 (Utah Ct. App. 1993) (quoting *State v. Vigil*, 840 P.2d 788, 793 (Utah Ct. App. 1992), cert. denied, 857 P.2d 948 (Utah 1993)). This case, contrary to Layton City's claim, is not a case where the defendant's brief is "devoid of any mention of the evidence supporting" the trial court's conviction" or an attempt to

¹Throughout the course of its Brief, Layton City inaccurately cites the Court to various portions of the record on appeal. For example, on page 9 of its Brief, Layton City cites to "R10" for the proposition that "Mervyn's employees cleared the dressing room of all clothing and other items immediately prior to Defendant entering the dressing room." This R. 10 citation, however, is actually page 2 of Defendant's Motion and Affidavit for Waiver of Court Fees, which is set forth at R. 9-13. See also the Record Index on appeal at R. 60.

"reargue defendant's case by recounting a version of the facts most favorable to defendant" Cf. *State v. Scheel*, 823 P.2d 470, 473 (Utah Ct. App. 1991). Instead, Ms. Spurgers, in the course of her Brief, marshals all of the evidence in support of the conviction, including circumstantial evidence, and then demonstrates that, based upon this evidence, Layton City failed to prove that she was guilty of retail theft. See Brief of Appellant, p. 11, et seq.

In its Brief, Layton City, for the most part, accurately articulates the question presented in this case, namely, "whether Defendant took possession of, concealed or carried away or caused to be carried away or transferred some merchandise for Mervyn's . . ." and whether that "was proven beyond a reasonable doubt." See Brief of Plaintiff and Appellee, p. 11.² While reviewing courts,

²The relevant portion of Utah Code Ann. § 76-6-602, for purposes of this appeal, provides as follows:

A person commits the offense of retail theft when he [or she] 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 retail 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; . . .

* * * *

Utah Code Ann. § 76-6-602(1).

in cases such as this, usually sustain the trial court's judgment unless it is against the clear weight of the evidence, there must be "some evidence, including reasonable inferences, from which findings of all the requisite elements of the crime can reasonably be made" See *State v. Boss*, 2005 UT App 520, ¶9, 127 P.3d 1236 (citing *State v. Mead*, 2001 UT 58, ¶67, 27 P.3d 1115). Moreover, "before [a reviewing court] can uphold a conviction it must be supported by a quantum of evidence concerning each element of the crime as charged from which the [factfinder] may base its conclusion of guilt beyond a reasonable doubt." *State v. Andreason*, 2001 UT App 395, ¶4, 38 P.3d 982 (citing *State v. Larsen*, 2000 UT App 106, ¶10, 999 P.2d 1252). So, according to constitutionally based principles, "[c]riminal convictions cannot rest on conjecture or supposition; they must be established by proof beyond a reasonable doubt." See *State v. Workman*, 852 P.2d 981, 987 (Utah 1993) (noting that the State's argument that "speculative inferences can constitute proof beyond a reasonable doubt is to attack one of the most sacred constitutional safeguards at its core").

The evidence presented by Layton City in this case "was so slight and unconvincing that it makes the verdict plainly unreasonable and unjust." See *State v. Heaps*, 2000 UT 5, ¶19, 999 P.2d 565. This Court cannot determine that the trier of fact,

acting as a reasonable person, could have found beyond a reasonable doubt that Ms. Spurgers committed the crime of retail theft. Layton City does not simply prevail in the instant case by putting on some evidence that is more convincing than that of Defendant. Rather, it must prove its case beyond a reasonable doubt, irrespective of what the Defendant presents at trial. See Utah Code Ann. § 76-1-501.³ The record adequately demonstrates that the evidence presented at trial was insufficient to support Ms. Spurgers' conviction of retail theft. To affirm Ms. Spurgers' conviction would be to accept the most speculative of evidence.

In fact, the Loss Prevention Supervisor in the instant case was so unsure that Ms. Spurgers had taken or concealed any merchandise on her person, that the Supervisor refused to detain either Ms. Spurgers or her mother prior to them leaving the store despite several opportunities to do so. Cf. Utah Code Ann. § 76-

³Utah Code Ann. § 76-1-501 provides, in relevant part:

(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In absence of such proof, the defendant shall be acquitted.

(2) As used in this part the words "elements of the offense" mean:

(a) The conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; or

(b) The culpable mental state required.

. . . .

6-603 (authorizing any merchant who has probable cause to believe that a person has committed retail theft to detain that person).⁴ Contrary to Layton City's argument, the most reasonable of inferences is that the Loss Prevention Supervisor chose not to detain Ms. Spurgers because there simply was no evidence, let alone probable cause to believe, that she had taken or concealed any merchandise. The store's video surveillance camera recording, which was probably the most critical piece of evidence at trial, fails to demonstrate that any clothing was taken by Ms. Spurgers. Further, no clothing was ever recovered, and neither Ms. Spurgers nor her mother confessed to the alleged crime. In fact, Ms. Spurgers readily denied taking anything from the store both when questioned on the telephone by Officer Jones and during her testimony at trial.

As demonstrated by the lack of evidence at trial, Layton City failed to prove each element beyond a reasonable doubt, as it is required to do. See Utah Code Ann. § 76-1-501. A review of the evidence supporting the retail theft conviction leads to the reasonable and logical conclusion that Ms. Spurgers' conviction was based on conjecture or supposition, which does not constitute

⁴Layton City argues that the Loss Prevention Supervisor's decision to not detain Ms. Spurgers was based on company policy. See Brief of Plaintiff and Appellee, p. 14. However, no company policy was presented during trial.

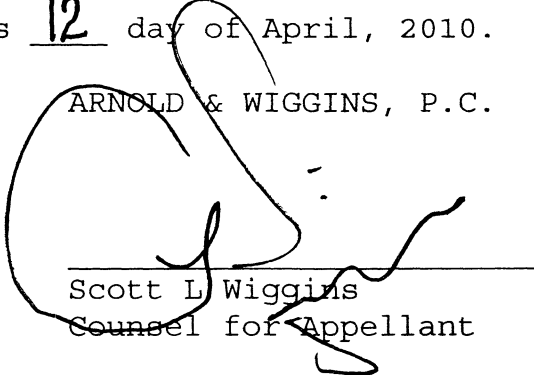
proof beyond a reasonable doubt. Thus, reversal of the retail theft conviction for insufficiency of the evidence is appropriate in the instant case.

CONCLUSION

Based on the foregoing, as well as that set forth in the previously filed Brief of Appellant, Ms. Spurgers respectfully requests that this Court reverse her conviction of retail theft and remand the case for further proceedings consistent with this Court's determination.

RESPECTFULLY SUBMITTED this 12 day of April, 2010.

ARNOLD & WIGGINS, P.C.



Scott L. Wiggins
Counsel for Appellant

CERTIFICATE OF SERVICE

I, SCOTT L WIGGINS, hereby certify that I personally caused to be mailed by First-Class Mail, postage prepaid, two (2) true and correct copies of the foregoing **REPLY BRIEF OF APPELLANT** to the following on this 12 day of April, 2010:

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ADDENDA

No Addendum is utilized pursuant to Utah Rule of Appellate Procedure 24(a)(11).