2001

State of Utah v. Brian David Logan : Brief of Appellant

Utah Supreme Court

Brian C. Harrison; Attorney for Appellant.
Robert B. Hansen; Attorney General; Attorney for Respondent.

[redacted]EME COURT OF THE STA[redacted]F UTAH

STATE OF U[redacted]

Pla[redacted]-Respondent, : Crim. No. 14644

v.

BRIAN DAVID [redacted]AN,

De[redacted]-Appellant. :

APPELLANT'S BRIE[redacted]

A[redacted] from the Judgment of the

[redacted]rict Court of Utah C[redacted]

H[redacted]ble George E. Ballif, Judge

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THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	Crim. No. 14644
v.	:	
BRIAN DAVID LOGAN,	:	
Defendant-Appellant.	:	

APPELLANT'S BRIEF

Appeal from the Judgment of the
District Court of Utah County
Honorable George E. Ballif, Judge

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TABLE OF CONTENTS

CASE CITED PAGE

STATUTES

AUTHORITIES CITED

THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	Crim. No. 14644
vs.	:	
BRIAN DAVID LOGAN,	:	
Defendant-Appellant.	:	

APPELLANT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

Defendant was charged in the Fourth Judicial District Court of Utah County upon an information alleging a violation of the provisions of Utah Code Annotated 76-6-404 and 76-6-412, in that he "excercised unauthorized control over property having a value of more than $250.00 but less than $1,000.00 belonging to Bullock and Losee Jewelers with intent to deprive them of the same."

DISPOSITION IN THE LOWER COURT

The matter was tried in the Fourth Judicial District Court in and for Utah County, Honorable George E. Ballif, Judge, presiding. Defendant was convicted as charged and sentenced to serve not more than five years in the Utah State Prison. It is from that verdict and judgment that the Defendant appeals.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of his conviction or failing that, a new trial.

STATEMENT OF THE FACTS

On October 22, 1975 defendant and his friend, Paul Mitchell, entered Bullock and Losee Jewelers, located in Provo, Utah (T 71). Paul Mitchell testified that after leaving the store, the defendant informed him that he had taken two watches (T 81, 84). Paul Mitchell's father, Harold Mitchell, then testified that the defendant had brought two watches to show him, stating, "it was easy to take them" (T 86). Harold Mitchell further testified that he took the watches to Salt Lake, pawned them, split the money with the two boys, and returned to Provo (T 87).

Defendant testified on direct examination that Paul Mitchell stole one watch and that he took the other (T 92).

Upon cross examination of the defendant, the prosecutor asked the following:

> Q. When did you tell Detective Terry that you only took one watch?
>
> A. I never did; I didn't say a word (T 94).

Subsequently, the prosecutor called Detective Terry for rebuttal, and asked the following:

Q. When was the first time that you were advised by the defendant that he had not taken the watches?

A. He never stated that he didn't take the watches. He didn't give any information concerning this at all.

Q. Is there any time, other than in court today, that he made that statement to you, that he made here?

A. No. This is the first time I have heard this, is today (T 97).

Prior to closing arguments by counsel, the Court asked for assistance from both counsel regarding the appropriate method of determining value (T 99). The conflict was between the use of replacement cost or retail cost as the appropriate measure of value (T 99).

The Court subsequently decided the issue in favor of retail cost and gave the appropriate instruction to the jury (T 37).

During the state's summation, the prosecutor spent a substantial protion of his time pointing out the Defendant's failure to deny having taken both watches (T 103, 104). He also dealt at length with the issue of retail cost in determining value (T 107, 108).

Defense cousel pointed out the problem of determing value and its significance in the case (T 111, 112). The prosecutor subsequently expounded at length on the issue of retail cost being the determining factor when considering value (T 114, 115, 116, 117).

The jury returned the verdict guilty as charged.

ARGUMENT

The following arguments constitute defendant's personally articulated basis for appeal in this matter.

POINT 1: "I only stole one watch".

POINT 2: "Harold Mitchell's testimony was biased because it was his son that stole a watch, and besides he (Harold Mitchell) was a drunken tramp anyway."

POINT 3: "I only said I stole one watch at the trial because before that time, I knew both Mitchell's would try to pin both watches on me anyway."

FURTHER ARGUMENT

POINT 4: JURY INSTRUCTION NO. 10 WAS ERRONEOUS AS A MATTER OF LAW.

Jury instruction No. 10 (T 37) gives the willing purchaser test as the basis for determining value. As support for this instruction, State v. Cooperative Security Corp. of Church of Jesus Christ of Latter-day Saints, 1 Utah 2d 178, 247 P. 2d 269, is cited in the volume Jury Instruction Forms for Utah. This is a case decided in 1952, which deals only with the concept of replacement cost. The court stated:

> ...the amount it would have cost respondents to replace the condemned land . . . which would have been a proper element in determining the value. . . (Supra. at 247 P. 2d 272).

Replacement cost to the owner of the goods in question would have been $147.50 (T 79). As such, in the event that this Court finds the testimony, showing that defendant took two watches, to be insufficient, the jury instruction submitted by the trial court constitutes prejudicial error.

CONCLUSION

The points which defendant personally claims as basis for appeal are herewith respectfully submitted to the Court for consideration.

DATED this 27th day of January, 1977.

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