

1980

State of Utah v. Edward G. Robichaux : Appellant's Brief

Utah Supreme Court

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Recommended Citation

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IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff and Respondent, :
vs. : Case No. 16667
EDWARD G. ROBICHAUX :
Defendant and Appellant. :

APPELLANT'S BRIEF

Appeal from the judgment of
the Third Judicial District for Salt Lake County
Honorable Peter Leary

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FILED

MAR 24 1980

Clk, Supreme Court, Utah

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STATEMENT OF KIND OF CASE

This is an appeal from a conviction of theft in the Third Judicial District Court.

DISPOSITION IN LOWER COURT

In a jury trial before the Honorable Peter F. Leary, Third District Court, Appellant was convicted of the charge of theft.

RELIEF SOUGHT ON APPEAL

Appellant prays that the conviction entered in the Third District Court be reversed, that this matter be remanded to the Third District Court for new trial.

FACTS

Appellant entered into a business arrangement with Complainant, David Felger, and several other individuals where real property was to be bought and sold by a business entity they created. In order to facilitate the plans of the company, financing needed to be acquired. At the point in time that these transactions were taking place, money was not generally available within local lending facilities. Appellant made arrangements with a local lending institution to make loans on a project the parties were involved in. Complainant David Felger testified that he provided the sum

of \$11,700.00 to Appellant for the purpose of paying spread money to attract monies from New York to the local banking institution in order to allow the loan, being negotiated by the parties, to be made. Complainant charges that Defendant, instead of using the money for the intended purpose, converted it for his own use.

Defendant testified that he, in fact, received the money from Complainant but that prior to receiving the money he had advised Complainant that the money would not be necessary for spread money and testified that Complainant agreed that the money could be used to offset personal expenses of the Appellant in continuing to work for the parties. Defendant testified that it was intended, at all times, that David Felger would get his money back when the company received it's loans.

For reasons not related to the conduct of either Complainant or Appellant, the loan for the project was never approved and the outside financing was never acquired. A portion of the monies received by the Appellant were returned to the Complainant.

I.

THE COURT INSTRUCTION THAT "THE LAW PRESUMES THAT A PERSON INTENDS THE REASONABLE AND ORDINARY CONSEQUENCES OF HIS OWN ACTS" REVERSED THE BURDEN OF PROOF FROM THE PLAINTIFF TO THE DEFENDANT AND, ACCORDINGLY, WAS A DENIAL OF DUE PROCESS TO THE DEFENDANT.

In the trial of the above matter, Defendant's receipt and use of the money was never a question. The issue is

whether the receipt was with felonious intent. On the issue of intent, the Court instructed the jury over the objection of Defendant as follows:

Intent or purpose, being a state of mind, is not always susceptible of proof by direct and positive evidence and must ordinarily be inferred from acts, conduct, statements, and circumstances. The law presumes that a person intends the reasonable and ordinary consequences of his acts. However, this presumption is a rebuttable presumption and may be overcome by evidence to the contrary.

Utah law, consistent with Federal due process requirements creates a presumption of innocence and requires that each and every element of any offense be proven beyond a reasonable doubt. Within the elements of the crime necessary for proof beyond a reasonable doubt, the culpable mental state is specifically included. UCA 76-1-501(2)(b), In re Winship 397 US 358, 25 L Ed 2d 368, 90 S Ct. 1068, (1970).

It was then clearly the burden of the State to prove the culpable mental state of Appellant. An important part of this proof was drawn from the Court's presumption, built on Appellant's receipt and use of the money.¹

But this is not to say all inferences are infirm. The legislature has provided an inference of knowledge of stolen property in the face of recent possession and no good explanation, UCA 76-6-402, but in this instance, no reversal of

1. The presumption used by the Court in the instant case is not one codified by the legislature and, accordingly, represents no burden the legislature has seen fit to place upon Defendants. The legislature, rather, under UCA 76-1-501, seems comfortable to leave the burden for proving culpable mental state on the shoulders of the State.

burden is provided as the State must prove beyond a reasonable doubt that the Defendant's explanation is not reasonable.

State v. Wood, 268 P.2d 998.

If the presumption is merely a permissive inference which does not require a finding of the elemental fact upon proof of the fact, but rather serves as evidence of its existence and proof, no added burden has been placed upon the Defendant. Ulster County Court v. Allen, ___ US ___, 60 L Ed 2d 777, 99 S Ct. ___ (1979). In ULSTER, Defendants were convicted of possession of a firearm when they were found riding in the same automobile with a young lady whose open purse contained two firearms in plain view. The Court, in that case, instructed the jury that it was entitled to infer possession from the Defendant's presence in the car where the guns were found. In upholding the conviction, the Court stated:

The trial court instructions make it clear that the presumption was merely a part of the prosecution's case; that it gave rise to a permissive inference available only in certain circumstances rather than a mandatory conclusion of possession and that it could be ignored by the jury even if there was no affirmative proof offered by Defendants in rebuttal. Id. US ___, 60 L Ed 2d 777, 794.

Accordingly, in determining whether the instruction given in the instant case meets constitutional muster, the nature of the presumption must be determined. In making this determination, it is necessary to look at the actual words spoken and how a reasonable juror could have interpreted the instructions. Sandstrom v. Montana, ___ US ___, 61 L Ed 2d

39, 99 S Ct. ___, (1979). In SANDSTROM, the Court dealt with an instruction similar to that given in the instant case but ending short with: "The law presumes that a person intends the ordinary consequences of his voluntary acts." Id., US ___, 61 L Ed 2d 39, 43. In concluding that that instruction failed to meet constitutional requirements of due process, the Court determined that:

"The challenged jury instruction had the effect of releasing the State of the burden of proof enunciated in WINSHIP on the critical question of petitioners state of mind." Id. US ___, 61 L Ed 2d, 39, 49.

The instant presumption, however, does not go so far as to be conclusive, but allows the Defendant to overcome and rebut the presumption by offering affirmative evidence. If the presumption was clearly mandatory, there would be no question of it's unconstitutionality. However, where some latitude is granted to the jury, the decision of constitutionality must rest upon whether the presumption creates merely an inference, which may be overcome by any amount of evidence presented by the Defendant, or one that shifts the burden to the Defendant to prove his lack of guilty state of mind. Id. And, as established in SANDSTROM, the test is neither the statutory intent, with respect to such presumptions, nor the intent of the judge but whether a reasonable juror could have interpreted this instruction to place a burden upon the Defendant.

In the instant case, the acts of the Defendant re-

sulted in the Complainant losing possession of at least a portion of money. The only real issue litigated in the case was whether the Complainant's loss was as a result of Appellant's intent to deprive him of the money. The consequence of the acts of the Appellant stands for a presumption of intent to deprive under the instruction given by the Court. Following the instruction, the jury would then look to Appellant to rebut and overcome this evidence in order to prove his innocence. The ordinary and probability reading of these words by any juror is not the inference of ULSTER; one that could be ignored by the jury even if there was no affirmative proof offered by the Defendant in rebuttal. The Court's instruction does not even tell the jury that the production of any evidence by the Defendant would overcome the presumption. This interpretation was argued by the State of Montana in SANDSTROM and found by the Court to be not the logical, let alone the possible interpretation in this case. In fact, one would wonder if such an instruction could have any meaning under such an interpretation when some evidence had, in fact, been advanced, as in the instant case.

It is far more logical and certainly possible that the reasonable juror, faced with this instruction, would attempt to weigh the evidence presented by the defendant to determine if that evidence is sufficient to overcome the presumption of guilt established by the ordinary consequences of his act.

Once the jury, or even one juror looks to the Defendant to prove his state of mind, based only on his performance of the acts alleged, the State has been relieved of it's burden to prove culpable mental state beyond a reasonable doubt.

SANDSTROM does not require a showing that the jury or a juror actually made this interpretation, only that one or more reasonably could have made such an interpretation. There is more than a possibility that one or more jurors shifted the burden of proof to Appellant, relying on this instruction. Accordingly, the instruction was improper and the matter should be remanded for new trial.

II.

THE COURT ERRORED IN PROVIDING AN INSTRUCTION ON DEFINITION OF THE TERM "KNOWINGLY" IN CONJUNCTION WITH INTENT AND PURPOSE.

In the instant case, a part of it's Instruction No. 6. over objection of the Defendant, the Court included the following:

In a case such as this, under the law, no person is guilty of an offense unless his conduct is prohibited by law and he acts intentionally or knowingly. A person acts intentionally under the law, either with respect to the nature of his conduct or to the results of his conduct, when it is that persons conscious objective or desire to engage in the conduct or cause the result. A person acts knowingly when he is aware of the nature of his conduct or the existing circumstances or that his conduct is reasonably certain to cause the result.

Appellant was charged under Utah Code Annotated, 76-6-404 with the crime of theft. The language of that section re-

quires "a purpose to deprive", calling for a specific culpable mental state known as specific intent. This standard requires a conscious purpose, not constructive intent, resulting from any degree of recklessness or knowledge of possible danger to the Complainant.

But in it's instruction, the Court required, not a finding that the Appellant engaged in conduct which deprived the Complainant of his property intentionally, but alternately, knowingly. This, of itself, might not have been so bad except the instruction of knowingly further establishes culpability if the Appellant's conduct is reasonably certain to cause the result. The result, in this case, being the loss of property to the Complainant. In many cases and situations, this may present no problem, but in the instant case where the conduct of the Appellant may well be determined by a jury to have been reckless and in opposition to the best interests of the Complainant, logically leading to the deprivation of his property. There is a great risk that the requirement for proof of intent may have been watered down. Appellant was not charged with the crime of reckless loss of Complainant's money, but may well have been convicted of such a non-crime based on the instruction complained of herein.

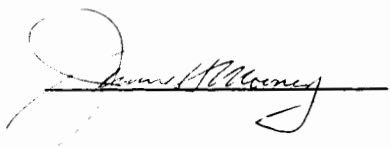
Appellant's conviction should be reversed and the case remanded for new trial.

CONCLUSION

This case having turned on the issue of intent, and the constitutional standard for proof of that important element having been placed in grave doubt through the erroneous allowance of Court Instruction Number 6, the Appellant's conviction should be reversed and the matter remanded for new trial.

CERTIFICATE OF MAILING

I do certify that a copy of the foregoing Brief was mailed, postage fully pre-paid, to: Robert B. Hansen, Utah Attorney General, State Capitol Building, Salt Lake City, Utah 84114, and Craig Barlow, Deputy Utah Attorney General, State Capitol Building, Salt Lake City, Utah 84114, this 2 day of March, 1980.

A handwritten signature in cursive script, appearing to read "James H. Mooney", is written over a horizontal line.