

1980

State of Utah v. Marc Chesnut : Appellant'S Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH,)	
)	
Plaintiff-Respondent,)	
)	
vs.)	Case No. 16945
)	
MARC CHESNUT,)	
)	
Defendant-Appellant.)	

APPELLANT'S REPLY BRIEF

APPEAL FROM THE JUDGMENT OF THE FOURTH
JUDICIAL DISTRICT COURT, IN AND FOR UTAH
COUNTY, STATE OF UTAH, THE HONORABLE
ALLEN B. SORENSEN, JUDGE

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STATE OF UTAH, :
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vs. : Case No. 16945
MARC CHESNUT, :
Defendant-Appellant. :

APPELLANT'S REPLY BRIEF

I

THE STATE FAILED TO ESTABLISH THE CORPUS DELICTI BY FAILING TO PROVE DEFENDANT'S INTENT TO PERMANENTLY DEPRIVE THE OWNER OF POSSESSION.

The Respondent argues that the corpus delicti was proved because the intent to permanently deprive of possession is not a part of the corpus delicti of theft. In support of that proposition Respondent cites State v. Knoefler, 563 P.2d 175 (1977) and State v. Cazier, 521 P.2d 554 (1974). In both those cases the defendant was asserting on appeal that the prosecution had failed to give proof, independent of the defendant's confession, that would link the accused with the commission of the crime. In both cases the court held that the connection of the accused with the crime is no part of the corpus delicti and affirmed. The statement in Cazier, quoted by Respondent, that the

corpus delicti does not include all the elements of the crime is made in particular reference to that one element.

The most common definition of corpus delicti is quoted from McCormick in notes in Knoefler, supra at 176.

To establish guilt it is generally necessary for the prosecution to show that a) the injury or harm specified in the crime occurred, b) this injury or harm was caused by someone's criminal activity, and c) the defendant was the guilty party. To sustain a conviction, the requirement of independent proof of the corpus delicti demands only that the prosecution have introduced evidence tending to show a) and b).

In other words, the corpus delicti includes everything the prosecution must prove except the connection of the defendant with the crime. The Appellant does not argue that the prosecution failed to give independent evidence of the accused's connection with the crime--he concedes that such evidence is not necessary. The Appellant argues rather that the prosecution failed to give independent evidence of the necessary element of the crime of theft: intent to deprive.

In 23 C.J.S. Criminal Law Section 916(1), also cited in Cazier, it states:

Corpus delicti means the body or substance of the crime, and may be defined in its primary sense as the fact that a crime actually has been committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged. [Emphasis added]

The Respondent would seem to contradict that statement.

The crime of theft has not been committed unless there

is an intent to permanently deprive the owner of possession of his goods. In not giving proof of that intent, the Respondent has failed to independently prove the corpus delicti.

II

AN INSTRUCTION ON THE LESSER INCLUDED OFFENSE OF JOYRIDING WAS MANDATORY IN THE PRESENT CASE.

In the case of State v. Dougherty, 550 P.2d 175 (1976) this court carefully considered the circumstances under which a lesser included offense instruction may or must be given. Relying on the Nevada case of Lisby v. State, 82 Nev. 183, 414 P.2d 592 (1966) the court listed three situations where a lesser included offense instruction is appropriate. (The second situation is one in which the accused denies any complicity in the crime and is not directly applicable here.) As to the first situation this court said:

First, where there is evidence which would absolve the defendant from guilt of a greater offense, or degree, but would support a finding of guilt of a lesser offense, or degree; the instruction is mandatory. (550 P.2d at 176)

In the present case there was clearly evidence which would support a finding of not guilty of the greater offense and also support a finding of guilt of the lesser offense. The defendant admitted that he intended only to ride the motorcycle in a nearby vacant lot and failed to obtain permission to do so only because he could not wake the

owner. The Trial Transcript reads as follows:

Q Let me draw your attention to the hours, a few hours later than midnight on what would be then the 27th of June, did you have an occasion to go over to Kenny's house?

A Yes, I did.

Q What did you go over for?

A To see if I could take his bike for a ride.

Q What did you do when you got there?

A I went to his door and knocked and nobody answered.

Q How many times did you knock?

A Oh, two or three. I figured he was asleep, so he's hard to wake up.

Q What happened then?

A Then I went around back to the side of his house and his bike was sitting there and I took it for a ride. I didn't ride it. I was going to take it for a ride.

Q Where were you going to ride it?

A In this vacant field that swings through to the school yard. It's all lit up and there is lights and stuff.

Q I see. What were you going to do after you-- well, let me strike that.

Did you have any intent in your mind as to what you were going to do after you had ridden the bike?

A I was going to take it back to where it was parked.

Q You didn't intend to steal the bike?

A No.

Q You weren't going to take it permanently?

A No.

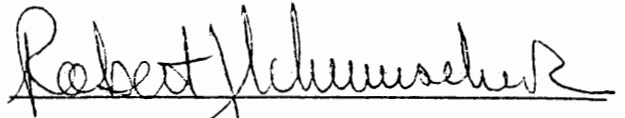
Transcript, 53, lines 19 through 30, p. 54, lines 1 through 19.

The third situation is even more applicable:

Third, is an intermediate situation. One where the elements of the greater offense include all the elements of the lesser offense; because, by its very nature, the greater offense could not have been committed, without defendant having the intent in doing the acts, which constitute the lesser offense. In such a situation instructions on the lesser included offense may be given, because all elements of the lesser offense have been proved. However, such an instruction may properly be refused if the prosecution has met its burden of proof on the greater offense, and there is no evidence tending to reduce the greater offense. The court concluded by stating that if there be any evidence, however slight, on any reasonable theory of the case under which the defendant might be convicted of the lesser included offense, the court must, if requested, give an appropriate instruction. 550 P.2d at 176

The Appellant certainly offered a reasonable theory of the case under which the requested instruction should have been given.

This Appellant's Reply Brief is respectfully
submitted this 29th day of July, 1980.



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CERTIFICATE OF MAILING

I hereby certify that I mailed three copies of the
foregoing Appellant's Reply Brief, to the Utah Attorney
General, Robert B. Hansen, at 236 State Capitol, Salt Lake
City, Utah, this 30th day of July, 1980.

