1980

State of Utah v. Ronald G. Clark : Brief of Appellant

Utah Supreme Court

Robert B. Hansen; Craig L. Barlow; Attorneys for Respondent;
Robert Van Sciver; Attorney for Appellant;

IN THE SUPREME COURT

OF THE STATE OF UTAH

STATE OF UTAH, Plaintiff-Respondent, -vs- RONALD G. CLARK, Defendant-Appellant.	Case No. 17037

BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT OF CONVICTION AND SENTENCE OF THE SIXTH JUDICIAL DISTRICT COURT OF SANPETE COUNTY, THE HONORABLE DON V. TIBBS, PRESIDING

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STATEMENT OF THE NATURE OF THE CASE

Appellant was charged with theft, a third degree felony, in violation of Sections 76-6-404 and 76-6-412(1)(b)(iii), U.C.A. (1953), as amended, for stealing three turkeys from a turkey farm near Ephraim, Utah.

DISPOSITION IN LOWER COURT

At a bench trial on February 11, 1980, appellant was convicted as charged.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of his conviction on constitutional grounds.

STATEMENT OF FACTS

Appellant was charged by information with the offense of theft, a felony of the third degree, to which appellant entered a plea of not guilty. (R., pp. 5-6)

At a bench trial commencing February 11, 1980, respondent called as witnesses Richard Olsen and Douglas Olsen, owners of

a turkey farm near Ephraim, Utah. The Olsens testified that in the early morning hours of October 19, 1979, they heard or saw the appellant club three turkeys to death in a turkey pen on their farm. They further testified that appellant was carrying the turkeys to his truck when they challenged him, and he dropped them inside the pen. A discussion ensued and appellant was thereafter arrested and charged. (Tr., pp. 14-26)

After a stipulation between counsel concerning the admission of exhibits and testimony of the investigating officer, respondent rested its case.

Appellant's attorney then moved to dismiss the charge on the basis that the State failed to prove all of the elements necessary to constitute theft. (Tr., pp. 30-32) The Court denied the motion and appellant rested and submitted the case.

The Court then found the appellant guilty as charged and ordered a presentence report to be prepared. At that time, the Court stated on the record that he considered the matter to be extremely serious and particularly to the community where the offense occurred. (Tr., pp. 33-34)

The sentencing proceeding was held on April 9, 1980. At that time, the Court placed appellant on probation for two years, imposed a fine of $1,500.00, ordered restitution of $45.00 (the value of the 3 turkeys) and ordered that appellant serve 90 days in jail as a condition of probation.

During the sentencing proceeding, the Court made several references to making an example of the appellant based upon

the attitudes of the community and particularly the turkey farmers and livestock producers. (Tr., pp. 47-50.

At one point, the Court compared the theft of the turkeys to a homicide and otherwise indicated that the severity of the sentence was intended as a warning to others. (Tr., p. 47)

ARGUMENT

POINT I

SECTION 76-6-412(1)(b)(iii), U.C.A. (1953) IS UNCONSTITUTIONAL AS A DENIAL OF EQUAL PROTECTION

The Fourteenth Amendment to the Constitution of the United States and Article I, Section 2 of the Constitution of Utah guarantee equal protection of the law.

The test of a statute for purposes of equal protection, absent some form of invidious discrimination, is that the statute must be grounded upon a rational basis. McGowan v. Maryland, 366 U. S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961) Thus, if there is no rational basis for a discrimination as to the classification of a criminal offense, then such a classification must fail as a denial of equal protection.

Appellant asserts that the classification of theft of poultry as a third degree felony constitutes a denial of equal protection in that Section 76-6-412(1)(b)(iii) makes no reference to the value of the animals stolen in determining the felonious nature of the offense.

The standard for defining the value of property in determining the degree of theft as to ordinary personal

property is the "market value" of the stolen items. State v. Logan, 563 P.2d 811 (Utah 1977)

There exists no valid reason why the theft of domestic animals should not also be classified into degrees based upon the market value of the animals. In the instant case, the value of the stolen turkeys was $45.00 which, under Section 76-6-412 (1)(d), U.C.A. (1953), would constitute only a Class B misdemeanor.

Appellant concedes that, at common law, there may have been a justification for classifying theft of domestic animals as grand larceny. In centuries past, agriculture was characterized by the small family farm, whereby the theft of a single horse or cow may well have jeopardized the economic survival of a family.

To equate agrarian conditions as they existed at common law with modern life is preposterous at best. The modern livestock industry is characterized by large mechanized and automated farms engaged in the production of thousands of animals for market.

The application of Utah's livestock theft statute is such that larceny of 3 live turkeys from a turkey farm is felonious while theft of the same 3 turkeys, slaughtered and packaged, from a grocery store is punishable only as a misdemeanor. To contend that an animal intended for slaughter is intrinsically more valuable to the farmer who raises it than to the grocer who retails it is a proposition so irrational as to be absurd.

As a separate equal protection challenge, Section 76-6-412, U.C.A. (1953), when construed as a whole, invests a prosecutor with the discretion to charge a person with a felony or misdemeanor for the same act. Thus, for the act involved herein, the prosecutor could elect to pursue the matter as a Class B misdemeanor based on the value of the turkeys or, as in appellant's case, he could treat the matter as a felony.

The comparison extends even further in that a statute separate from the theft statutes would also classify appellant's act as a Class B misdemeanor. Inasmuch as the turkeys were clubbed to death, the prosecution could have elected to proceed against appellant for a misdemeanor under Section 76-9-301, U.C.A. (1953) for cruelty to animals.

Thus, not only is there no rational basis for the classification of theft of poultry as a felony, the livestock theft statute, in its application, must be found to violate equal protection by allowing a prosecutor to charge either a felony or misdemeanor based upon the same set of facts. State v. Blanchey, 454 P.2d 841 (Wash. 1969); State v. Langworthy, Wash. App., 583 P.2d 1231 (1978).

Appellant asserts that Section 76-6-412(1)(b)(iii), should be held unconstitutional as violative of equal protection on either or both of the bases set forth above.

POINT II

SECTION 76-6-412(1)(b)(iii) IS UNCONSTITUTIONAL AS A VIOLATION OF THE PROHIBITION OF PRIVATE OR SPECIAL LAWS

Article VI, Section 26 of the Constitution of Utah prohibits the enactment of private or special laws "where a general law can be applicable." Appellant contends that such is the case with regard to Section 76-6-412(1)(b)(iii). The general theft provisions which classify offenses on the basis of value are available to prosecute one who steals poultry.

The effect of Utah's livestock theft statute is to provide special criminal sanctions intended to protect a private industry, namely livestock and poultry raising.

Once again, the test for classifications as to special or private laws is that of reasonableness. Utah Farm Bureau Ins. Co. v. Utah Ins. Guaranty Assn., 564 P.2d 751 (Utah 1977) Appellant contends that, once again, Utah's livestock theft statute fails that test.

Utah's statute is particularly suspect in that, historically theft of poultry was not included as a felony offense. The provision adding poultry to the list of domestic animals as to which larceny constituted a felony was only enacted by the Utah legislature in 1977. It is apparent that the recent inclusion of poultry is a response to lobbying by Utah's substantial turkey raising industry.

At least as to the larger, hoofed domestic animals there might exist a valid presumption that, in view of modern prices,

even the value of one such animal would be sufficient to constitute felony theft on a market value basis. Clearly, the same presumption would not apply to a single turkey.

A review of surrounding jurisdictions indicates that those which have affirmed the constitutionality of felony theft laws concerning domestic animals have involved statutes which define livestock as hoofed animals, not poultry. State v. Feeley, 552 P.2d 66 (Mont. 1976); State v. Pacheco, 81 N.M. 97, 463 P.2d 521 (1969); Houser v. Fourth Judicial District Court, 345 P.2d 766 (Nev. 1959).

The inclusion of poultry in Section 76-6-412(1)(b)(iii) is a clear violation of the constitutional prohibition against special legislation and mandates a reversal of appellant's conviction.

POINT III

THE SENTENCE OF THE COURT WAS EXCESSIVE AND ARBITRARILY AND PREJUDICIALLY IMPOSED

Assuming, arguendo, that the statute under which appellant was convicted is constitutionally valid, the sentence in appellant's case was unduly harsh and imposed prejudicially in response to pressure from the community and special interests.

During the sentencing proceeding, the Court referred to pressure on the prosecutor by the farm community and livestock and poultry interests to seek a harsh penalty for appellant. (Tr., pp. 47-48)

Further, the Court noted the desire of the community, reflecting his own inclination, to make an example of appellant.

At one point, the Court even compared the offense in degree of seriousness to a homicide. (Tr., pp. 47-50)

Appellant asserts that the imposition of a lengthy period of probation, 90 days imprisonment and a stiff fine of $1,500.00 was motivated, not by a concern for justice, but rather by a concern for the protection of the property rights of a special interest group, the livestock and poultry farmers.

Appellant contends the severity of the penalty imposed bore no relation to the nature of the offense of stealing 3 turkeys worth $45.00 nor with the appellant's character, i.e., no serious prior criminal record and a stable background and employment history.

Consequently, appellant urges the Court, alternatively, to find the sentence of the trial court to be excessive and arbitrarily imposed, despite the fact that it was within the statutory limits for a third degree felony.

CONCLUSION

Appellant requests the Court to find the relevant statute unconstitutional and reverse his conviction.

DATED this 23rd day of September, 1980.

Respectfully submitted,

Robert Van Sciver

ROBERT VAN SCIVER
Attorney for Appellant

DELIVERY CERTIFICATE

I hereby certify that I delivered two copies of the foregoing Appellant's Brief to the Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, this 23rd day of September, 1980.

Robert Vanderhooven