1999

State of Utah v. Linda Marjorie Fuller : Reply Brief

Utah Court of Appeals

Kent R. Hart, Scott Williams; counsel for appellee.
Jeanne B. Inouye; assistant attorney general; Mark L. Shurtleff; utah attorney general; Kenneth R. Updegrove; Deputy Salt Lake County Attorney; counsel for appellant.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff/Appellee,	:	
	:	Case No. 990930-CA
vs.	:	
LINDA MARJORIE FULLER, Defendant/Appellant.	:	Priority No. 15

REPLY BRIEF

JEANNE B. INOUYE (1618)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
MAIL STOP 140854
Salt Lake City, UT 84114-0854

Counsel for Appellant

KENT R. HART
SCOTT WILLIAMS
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, UT 84111

KENNETH R. UPDEGROVE
Deputy Salt Lake County Attorney
231 East 400 South, Suite 300
Salt Lake City, UT 84111

Counsel for Appellee

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Deputy Salt Lake County Attorney
231 East 400 South, Suite 300
Salt Lake City, UT 84111

Counsel for Appellant

KENT R. HART
SCOTT WILLIAMS
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, UT 84111

Counsel for Appellee

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REPLY BRIEF

REPLY TO APPELLEE'S POINT I.A.

THE STATE MET THE *CLARK* BINDOVER STANDARD WHEN IT PRESENTED EVIDENCE THAT DEFENDANT UTTERED A FORGED CHECK

The State agrees with defendant that *State v. Clark*, 2001 UT 9, 20 P.3d 300, decided after the State filed its opening brief, clarifies the quantum of evidence required to bind a case over for trial. Br. Appellee at 11-12. *Clark* holds "that the quantum of evidence necessary to support a bindover is less than that necessary to survive a directed verdict motion." 2001 UT 9, ¶16. "[A]t both the arrest warrant and the preliminary hearing stages, the prosecution must present sufficient evidence to support a reasonable belief that an offense has been committed and that the defendant committed it." *Id.* "However, unlike a motion for a directed verdict, this

evidence need not be capable of supporting a finding of guilt beyond a reasonable doubt." *Id.* at ¶15.

Contrary to defendant's contention, however, the *Clark* standard was met here. Br. Appellee at 10, 12. By presenting evidence that defendant possessed and uttered a forged instrument, the prosecutor presented evidence supporting a reasonable belief that defendant knew of the forgery or intended to defraud someone. Under *State v. Kihlstrom*, "possessing and uttering a forged instrument is a sufficient basis on which a jury may infer defendant's knowledge or purpose to defraud." 1999 UT App 289, ¶18, 988 P.2d 949. The *Kihlstrom* court based this holding on its interpretation of *State v. Williams*, 712 P.2d 220 (Utah 1985).

Defendant now asserts that *Clark* undermines both *Kihlstrom* and *Williams*. Br. Appellee at 14-15. It does not. Citing *Kihlstrom*, the Supreme Court made this observation in *Clark*:

> The court of appeals has asserted that *Williams* stands for the proposition that 'a person who merely utters a forged instrument can be inferred to have knowledge of the forgery,' and, in light of that interpretation, [the defendants] argue that we should take this opportunity to overturn *Williams*. ***We decline the invitation to reconsider Williams.***

2001 UT 9, ¶18 n.4 (emphasis added). *Clark* did not overturn, modify, or limit *Williams*. Neither did it disturb *Kihlstrom*. When it declined to reconsider *Williams*, it let developed precedent stand. *See A.C. Financial, Inc. v. Salt Lake County*, 948 P.2d 771, 775 (Utah 1997) ("[r]ather than calling *Black* into question,

the *Nelson* Court expressly declined to reconsider [its] validity"); *State in re C.Y. v. Yates*, 765 P.2d 251, 254 (Utah Ct. App. 1988) ("we decline to reconsider and overrule this court's prior denial").

The State presented evidence that defendant possessed and uttered a forged instrument. That evidence was sufficient to support a reasonable belief that a forgery had been committed and that defendant committed it.

REPLY TO APPELLEE'S POINT I.B.

EVEN ASSUMING THAT *CLARK* REPUDIATED *KIHLSTROM*, THE STATE HAS PRESENTED ADDITIONAL FACTS TO ESTABLISH KNOWING FRAUD

The *Clark* defendants presented forged checks only hours after the reported check thefts. 2001 UT 9, ¶20. When the banks delayed cashing their checks, they left without taking their checks with them. *Id.* Evidence of these circumstances further supported an inference that the *Clark* defendants knew they were presenting forged checks. *Id.* Defendant argues that these circumstances were critical to the *Clark* decision and that the instant case is therefore distinguishable.

The presence of additional facts in *Clark* does not change undisturbed precedent holding that the mere utterance of a forged instrument suffices to support an inference of knowledge. Until and unless disturbed, that precedent is the law in this jurisdiction, as it is in others.[1]

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[1]See cases cited in *State v. Kihlstrom,* 1999 UT App 289, ¶15, n.7. *See also* (continued...)

In any case, additional facts suggesting knowledge are also present here. Defendant told an investigating officer that she received her check as payment for upholstering a sofa, but stated that she had no business license and could not identify or describe the person who allegedly gave her the check. R. 77:28-29, 32-33.

Defendant states that "the absence of business records and a business license may show [defendant] is a poor business person, [but] they do not reasonably indicate knowledge of the specific forgery here." Br. Appellee at 13. Further, defendant argues, "[t]o infer such knowledge would require a conclusion that [defendant] lacked credibility." *Id.*

The inability or unwillingness to identify and describe the person from whom defendant purportedly received the check and the lack of a business license are cumulative evidence, further supporting an inference of knowledge. While they may be susceptible of a different interpretation, such as that favored by defendant, a court "must view all evidence in the light most favorable to the prosecution and must draw all reaonable inferences in favor of the prosecution." *Clark*, 2001 UT 9, ¶10 (internal quotation marks and citation omitted). The court "may not sift or

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[1](...continued)
Gossett v. State, 451 So.2d 437, 438-439 (Ala. Crim. App. 1984); *Mayes v. State*, 571 S.W.2d 420, 425 (Ark. 1978); *State v. Hicks*, 714 P.2d 105, 110 (Kan. Ct. App. 1986); *Laird v. State*, 406 So.2d 35, 36 (Miss. 1981); *State v. Taylor*, 778 S.W.2d 276, 279 (Miss. Ct. App. 1989); *Fitzgerald v. Commonwealth*, 313 S.E.2d 394, 395 (Va. 1984).

weigh the evidence . . . but must leave those tasks to the finder of fact a trial." *Id.* (internal quotation marks and citations omitted).

The State presented evidence to show that defendant uttered a forged check. That evidence is sufficient to support a bindover. Even if further evidence were necessary, the State has shown additional evidence supporting the inference that defendant knew the check was forged.

REPLY TO APPELLEE'S POINT I.C.

DEFENDANT CANNOT AVOID BINDING PRECEDENT BY ASSERTING THAT IT IS UNCONSTITUTIONAL

Defendant argues that "[r]egardless of the current state of the law, allowing guilt to be inferred from the mere possession of a stolen, forged check undermines essential, fundamental rights of the accused." Br. Appellee. at 16. Defendant's argument is an attack on precedent binding in this court. Defendant's analysis, in fact, closely tracks an argument that this Court detailed in *Kihlstrom*, but rejected "in the face of binding precedent." 1999 UT App 289, ¶13.[2]

In *Kihlstrom*, this Court held, citing *Williams*, that "[u]nder current Utah law, a person who merely utters a forged instrument can be inferred to have knowledge of the forgery." *Id.* Under the doctrine of stare decisis, this Court is bound both by the Supreme Court's holdings in *Williams* and *Clark* and by the *Kihlstrom* panel's

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[2]The *Kihlstrom* court considered, for instance, defendant's arguments about the presumption of innocence, the burden of proof, and "chilling" of the Fifth Amendment privilege to remain silent. 1999 UT App 289, ¶10 n.5.

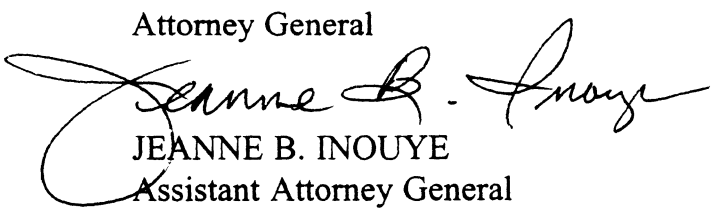
interpretation of *Williams*. *See Renn v. Utah State Board of Pardons*, 904 P.2d 677, 681 (Utah 1995) (stating that holding by one panel of Court of Appeals is binding on other panels of Court of Appeals); *State v. Thurman*, 846 P.2d 1256, 1269 (Utah 1993) (determining that decision of panel of the Court of Appeals has force of stare decisis in subsequent decisions by other panels); *State v. Ostler*, 2000 UT App 28, ¶7. 996 P.2d 1065, *cert. granted*, 9 P.3d 170 (Utah July 12, 2000) (No. 20000287) (same). Contrary to defendant's urging, this Court cannot disregard binding precedent.

CONCLUSION

The trial court's order quashing the bindover should be vacated and the information reinstated.

RESPECTFULLY submitted on July 2, 2001.

MARK L. SHURTLEFF
Attorney General



JEANNE B. INOUYE
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing Brief of Appellee were either mailed, postage prepaid, or hand-delivered to Kent R. Hart and Scott Williams, Attorneys for Appellant, Salt Lake Legal Defender Assoc., 424 East 500 South, Suite 300, Salt Lake City, UT 84111, this 2nd day of July, 2001.