

1982

# State of Utah v. Jan C. Graham : Reply to Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,

Plaintiff- Respondent,

vs.

JAN C. GRAHAM,

Defendant-Appellant,

Case No. 18123

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REPLY TO BRIEF OF RESPONDENT

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Appeal from a conviction of Theft by receiving Stolen Property in the Second Judicial District Court in and for Weber County, State of Utah, the Honorable John F. Wahlquist, Judge, presiding.

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that Appellant at no time acted in any way to suggest that he was not the rightful owner of the pistol or that he had knowledge that the pistol had been stolen. Of course this inference played upon by Respondent. However, there is no testimony at any time from any person to show, Number One, that the pistol was stolen, or Number Two, that Defendant-Appellant had knowledge.

## ARGUMENT

### Point One

In Appellants Brief submitted to this Court Appellant contends that there was insufficient evidence to support the guilty decision from the jury. Appellant contends that there was no prima facia case of theft be receiving proven by the State. In Respondents Bried respondent repeatedly mentions that the jury is the final finder of fact. This Appellant did not argue with that statement, however, the Supreme Court of the State of Utah is the final decider of law and has repeatedly stated that a prima facia case must be shown before defendant may be convicted of the crime of theft by receiving State vs. Murphy, 617 P.2d 399, 1980. The Appellant contends that this matter should not have been submitted to a jury and that the charges against Appellant should have been dismissed. The State of Utah as Respondent in its own argument shows that at no time have proving evidence showing the gun as "stolen" but rather "missing". The State of Utah tempts to say that this is sematic labor. However, sematic labor in this instance could be responsible for putting an innocent man in prison and subverting the State of Utah intentions when the law of theft be receiving, Utah

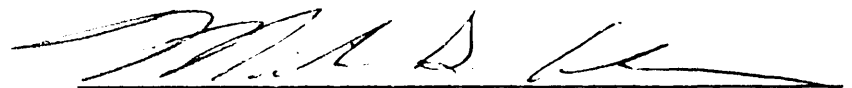
Code Annotated, Section 76-6-408 (1) (1953) was inacted. This law is very clear on its case that all evidence must be proven. The State mentions in its argument that this one-of-a-kind Browning Pistol was locked in a display cabinet in the library, there was never any evidence that the gun was locked in a display cabinet or at what time the gun dissapeared from Browning Arms or when in fact placed on Browning Arms inventory.

The States argument relies on circumstancial evidence greatly and quotes several cases but, we believe that the Court and the State Legislature under the law of theft by receiving requires more than circumstantial evidence and the Appellant would refer the Court to his original Brief.

#### CONCLUSION

Your Appellant submits that a prima facia case was not established sufficient to submit the question of theft be receiving to a jury. Your Appellant states that this matter should have been dismissed at the local Court level and that the State should have been require as provided by law to prove each and every level of the act of theft by receiving beyond reasonable doubt.

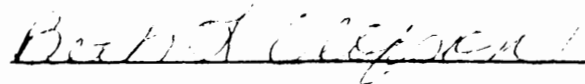
RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of July, 1982.



Merlin G. Calver  
Attorney for Defendant-Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed two (2) true and exact copies of the foregoing Reply, Postage prepaid to Robert N. Parrish, Assistant Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, this   1   day of July, 1982.

  
Beth L. Olofson, Secretary