1984

The State of Utah v. Gordon P. Graves : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Respondent	:	
vs.	:	
GORDON P. GRAVES,	:	Case No. 19090
Appellant	:	

BRIEF OF APPELLANT

Appeal from a conviction and judgment of Receiving or Transferring Stolen Vehicle, a felony of the Third Degree, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Homer F. Wilkinson, Judge, presiding.

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STATEMENT OF THE NATURE OF THE CASE

The appellant, Gordon P. Graves, appeals from a verdict by the judge of guilty in a criminal proceeding in which he was charged with the offense of Receiving or Transferring Stolen Vehicle, a Third Degree Felony, in violation of Utah Code Ann. §41-1-112 (1953 as amended) in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Homer F. Wilkinson, Judge, presiding.

DISPOSITION IN THE LOWER COURT

The Appellant was tried before the bench on January 10, 1983, in the Third Judicial District Court and was found guilty of Receiving or Transferring Stolen Vehicle, a Third Degree Felony and was sentenced to incarceration at the Utah State Prison for the indeterminate term as provided by law.

RELIEF SOUGHT ON APPEAL

Appellant seeks to have the judgment rendered against him reversed and the case remanded to the Third Judicial District Court for a new trial.

STATEMENT OF FACTS

On May 15, 1982, a 1982 GMC truck, Utah Plates LC 1991, was discovered missing from 1330 Beck Street. The vehicle belonged to Asphalt Sales located at that same address. No one was authorized to take the truck and the Appellant was not employed or known by the Asphalt Sales Company (T.4).

On July 6, 1982, South Salt Lake Police Officer, Lee O. Lindsay was on duty between 2:30 and 3:00 o'clock in the morning. He was working westside patrol in the Ninth West area and was in a patrol car (T.5). He had received a call of burglary approximately a half hour earlier and was checking the area (T. 6,14) when he observed the Appellant in a blue over silver truck exit from 2610 South northbound onto 900 West (T.6). There were two other vehicles at Treasure City Advertising which was the only business open in that area at the time (T.7).

The officer was southbound and made a U-turn to follow the vehicle. He checked the vehicle license plate number and determined that vehicle was the vehicle reported missing by Asphalt Sales Company. He followed the vehicle for a couple of minutes over a five city block distance passing through three

semaphores (T.7,14,16). The officer followed approximately 20 feet behind Apppellant (T.11) and the Appellant never slowed down, speeded up or took any evasive action after the officer began following him (T.11). In fact, the maximum speed of the vehicles was no more than 25 mph (T.11). The Appellant was driving through Burningham's Truck Stop parking lot when he was finally stopped by Officer Lindsay and a back-up officer (T.11). Appellant pulled over immediately when Officer Lindsay activated the overhead lights (T.15). Appellant was then arrested, placed in the officer's vehicle (T.13), the vehicle was impounded and nothing was found in the vehicle (Id.).

ARGUMENT

POINT I

THE EVIDENCE WAS INSUFFICIENT TO CONVICT APPELLANT OF THE OFFENSE OF RECEIVING OR TRANSFERRING STOLEN VEHICLE UNDER §41-1-112, UTAH CODE ANN. (1953 as amended), AS THE STATE FAILED TO PROVE THAT APPELLANT "KNEW OR HAD REASON TO BELIEVE" THE VEHICLE WAS STOLEN.

The offense of Receiving or Transferring Stolen Vehicle §41-1-112, Utah Code Ann. (1953 as amended) provides:

> Any person who, with intent to procure or pass title to a vehicle which he knows or has reason to believe has been stolen or unlawfully taken, receives, or transfers possession of the same from one to another, or who has in his possession any vehicle of the same from or to another, or who has in

> his possession any vehicle which he knows or has reason to believe has been stolen or unlawfully taken, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, is guilty of a felony.

This provision is part of the Motor Vehicle Code. Under that statute, one of the necessary elements of the offense is "knowing or having reason to believe" that the vehicle in ques was stolen.

The question of what elements must be proved under this statute was raised in the case of State v. Porter, 502 P.2d 11 (Utah 1972). There the court stated:

> It is, of course, the responsibility of the state to affirmatively prove all of the essential items of the offense (citing State v. Gutheil, 98 P.2d 943). 502 P.2d at 1148.

In that particular case, the appellant contended that the Stat was required to prove affirmatively that the appellant was not "an officer of the law engaged in the performance of his duty." The court ruled that "exceptions that are not necessarily an essential and integral part of the definition of the offense, but are severable therefrom, need not be proved." 502 P.2d at 1148. Obviously, that element which requires the specific inte of "knowing or having reason to believe" is not severable but fact is integral. The State, therefore, must affirmatively pr that the Appellant knew or had reason to believe the vehicle stolen.

In State v. Petree, 659 P.2d 443,444 (Utah 1983) this Court stated, ". . . notwithstanding the presumptions in favor of the jury's decision this Court still has the right to review the sufficiency of the evidence to support the verdict." Further, the Court noted:

> We reverse a jury conviction for insufficient evidence only when the evidence, (so viewed, is in the light most favorable to the verdict) is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted. (Citations omitted.)

Finally, the dissent in State v. Lamm, 606 P.2d 229 (Utah 1980) noted:

> If the circumstances essential for conviction, are ambiguous and consistent with the innocence of the accused, then this Court must hold as a matter of law that there is no substantial evidence to support guilt of the accused. Id. at 234-35.

Viewed against this background, the evidence to support Appellant's conviction for Receiving or Transferring Stolen Vehicle is insufficient.

At trial, the State produced evidence that the vehicle was reported missing and Appellant was not known by the people at Asphalt Sales Company. Over a month and a half after the vehicle was reported stolen, the Appellant was discovered driving the vehicle in an industrial area in the early morning hours. The officer who saw the Appellant driving around was in a patrol car and visible to the Appellant. The Appellant continued driving

at his same speed and took no evasive action even though the officer followed him for approximately five city clocks. Further, Appellant stopped immediately when the officer activated the overhead lights. There was no evidence of foul play. In fact the officer had been investigating a burglary and nothing was found in the vehicle to indicate Appellant had been doing anything other than driving the vehicle. Most importantly, there was no affirmative evidence that the Appellant knew or had reason to believe the vehicle was stolen.

While it is true that intent or knowledge cannot always be directly proven but must be inferred in light of the surrounding circumstances, there is nothing in the State's evidence to infer that required intent element of knowledge or reason to believe the vehicle was stolen. In fact the circumstances of the stop infer that Appellant had no guilty knowledge. He did not flee at the sight of the officer. He took no evasive action and, in fact, immediately pulled over at the direction of the police officer. Further, there was no evidence whatsoever of any illegal conduct during the course of the evening on Appellant's part. The State failed to produce affirmative proof of the requried mental state of Appellant and therefore, the evidence was insufficient to convict him of the offense of Receiving or Transferring Stolen Vehicle.

CONCLUSION

Based on the above reasons, the State failed to affirmatively prove that Appellant "knew or had reason to believe" that the vehicle in quesiton was tolen and contends his conviction be reversed and the case remanded to District Court for a new trial.

Respectfully submitted this 13 day of April, 1984.

FRANCES M. PALACIOS
Attorney for Appellant

DELIVERED two copies of the foregoing Brief of Appellant to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 13 day of April, 1984.