1984

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

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.David L. Wilkinson and Dave B. Thompson; Attorneys for Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No. 19090
GORDON P. GRAVES	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

APPEAL FROM JUDGMENT AND CONVICTION FOR POSSESSION OF A STOLEN MOTOR VEHICLE, A THIRD-DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 41-1-112 (1981), IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, UTAH, THE HONORABLE HOMER F. WILKINSON, JUDGE, PRESIDING.

DAVID L. WILKINSON
Attorney General
DAVE B. THOMPSON
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

FRANCES M. PALACIOS
Salt Lake Legal Defender Assoc.
333 South Second East
Salt Lake City, Utah 84111

Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No. 19090
GORDON P. GRAVES	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

APPEAL FROM JUDGMENT AND CONVICTION FOR POSSESSION OF A STOLEN MOTOR VEHICLE, A THIRD-DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 41-1-112 (1981), IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, UTAH, THE HONORABLE HOMER F. WILKINSON, JUDGE, PRESIDING.

DAVID L. WILKINSON
Attorney General
DAVE B. THOMPSON
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

FRANCES M. PALACIOS
Salt Lake Legal Defender Assoc.
333 South Second East
Salt Lake City, Utah 84111

Attorney for Appellant

TABLE OF CONTENTS

CASES CITED

Cases Cited (Continued)

STATUTORY LAW

SECONDARY SOURCES

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No. 19090
GORDON P. GRAVES	:	
Defendant-Appellant.	:	

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged with Possession of a Stolen Motor Vehicle, a third-degree felony, in violation of Utah Code Ann. § 41-1-112 (1981).

DISPOSITION IN THE LOWER COURT

In a bench trial held January 10, 1983, in the Third Judicial District Court, Salt Lake County, Utah, the Honorable Homer F. Wilkinson, Judge, presiding, appellant was tried and convicted of possession of a stolen motor vehicle. On January 26, 1983, appellant was sentenced to serve zero to five years in the Utah State Prison and fined $1,000 as provided by law.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the judgment and sentence imposed by the lower court.

was arrested and was later charged with possesion of a stolen motor vehicle (R. 9; T. 7, 10, 12-13).

At trial, Officer Lindsay testified that he did not pay much attention to the speed of the truck as he followed it (T. 11). He assumed that it was only going about 20 or 25 miles per hour (T. 11). And except at the truck stop, where appellant slowed down in the parking area, the officer did not recall seeing appellant speed up or slow down significantly during the time that he was being followed (T. 14-15). When asked if appellant had taken any evasive action during that period, the officer responded: "Not that I would -- unless he was trying to lose me in [the truck stop], which he was unsuccessful" (T. 15).

The truck that appellant was driving had been stolen from Asphalt Sales Company (T. 4, 9). At trial, defense counsel stipulated that Asphalt Sales owned a 1982 GMC truck, license no. LC 1991; that it discovered its truck to be missing from its shop on May 15, 1982; that it did not know who had taken the vehicle; that no one was authorized to take the vehicle; and that appellant was neither known nor employed by the personnel at Asphalt Sales (T. 4).

The record does not indicate that appellant offered an explanation to Officer Lindsay, at the time he was stopped by the latter on 2100 South, regarding his unauthorized possession of the truck. Neither was any evidence adduced at trial to justify or explain that possession (T. 19).

truck in his possession, and (3) that appellant knew or had reason to believe that the truck was stolen. Appellant does not dispute that the first two elements of the crime were proved. The issue, then, is whether there was sufficient evidence adduced at trial to support a finding by Judge Wilkinson that appellant knew or had reason to believe that the truck he possessed was stolen.

One acts with knowledge when he is aware of the nature of the existing circumstances. Utah Code Ann. § 76-2-103(2) (1978). Since guilty knowledge, like intent, is a state of mind and is rarely capable of direct and positive proof, it may be inferred by the trier of fact from the actions of the defendant and from surrounding facts of circumstances. See State v. Murphy, Utah, 674 P.2d 1220, 1223 (1983); State v. Brooks, Utah, 631 P.2d 878, 881 (1981).

With regard to permissible inferences, or presumptions of fact (as they are often called), the Court in State v. Brooks said:

> This Court has defined an "inference" as a logical and reasonable conclusion of the existence of a fact in a case, not presented by direct evidence as to the existence of the fact itself, but inferred from the establishment of other facts from which by a process of logic and reason, based upon common experience, the existence of the assumed fact may be concluded by the trier of fact. An inference does not disappear from a case but goes to the fact trier to be weighed along with the contravening evidence because all inferences, which are capable

Not only is it "deeply rooted in our law," id. at 843, it is a rational inference. As indicated in United States v. Taylor, 334 F. Supp. 1050 (D. Pa. 1971), aff'd, 469 F.2d 284 (3d Cir. 1972):

> [T]he presumption of guilty knowledge that arises from recent possession of stolen goods is not statutory in origin, but is a long recognized rule of common law. It is supported by good sense and everyday experience: United States v. Coppola, 424 F.2d 991, 993 (2d Cir. 1970). For centuries, unexplained possession of recently stolen property has been accepted as evidence of wrong-doing. As a permissible inference for the jury, it satisfies the requirements of due process: United States v. Johnson, 140 U.S. App. D.C. 54, 433 F.2d 1160, 1169 (1970).

Id. at 1057 (emphasis added). And in the Barnes case, the Court affirmed the Court of Appeals' finding that there is no lack of "rational connection" between unexplained possession of recently stolen property and knowledge that the property is stolen. Barnes, 412 U.S. at 841, 843-846, 846 n.11.

Statutory and case law in Utah also recognize the validity of the inference of guilty knowledge in such

---

States, 165 U.S. 486, 502-503 (1897). Many state supreme courts have also upheld the use of this inference. See 29 Am. Jr. 2d Evidence § 229 (1967 & Supp. 1983), and cases cited therein. Cases from nearby states which have so held include Wells v. People, 197 Colo. 350, 354-355, 592 P.2d 1321, 1324-1325 (1979) (instruction on knowledge presumption of ancient vintage), Hughes v. State, 536 P.2d 990, 992-993 (Okla Crim. App. 1975) (per curiam); People v. Lyons, 50 Cal. 2d 245, 258, 324 P.2d 556, 562 (1958); State v. Salzman, 186 Wash. 44, 47, 56 P.2d 1005, 1007 (1936).

the same with regard to burglary). Regarding the inference contained in the former larceny statute, the Kirkman Court observed:

> This statute has nothing to do with burglary and applies only to charges of stealing. However, one who has possession of recently stolen property would be faced with the situation of having adverse inferences drawn against him, and such inferences together with all the other evidence might be enough to convince a jury beyond a reasonable doubt that the defendant was guilty of larceny even in the absence of the statute above quoted.
>
> The same adverse inference will confront a defendant in a burglary case where he has possession of recently stolen property which could have been obtained only by a burglarious entry into a building. There would be a duty upon the one in possession of such property to explain his possession if he is to remove that adverse inference against him pointing toward his guilt; and if he gives a false account of how he acquired that possession, or having a reasonable opportunity to show that his possession was honestly acquired he refuses or fails to do so, such conduct is a circumstance which may be considered by the jury along with all other evidence bearing upon the case in determining guilt or innocence.

20 Utah 2d at 46, 432 P.2d at 638-639 (emphasis added).

Other jurisdictions have also extended the inference to robbery cases. See Wells v. People, 197 Colo, 350, 354-355, 592 P.2d 1321, 1324-1325 (1979), and cases cited therein. Still others have extended its application to cases of "receiving and possessing stolen property." See, e.g., Combs v. Commonwealth, Ky., 341 S.W.2d 774, 775 (1960)

Finally, that the inference may be validly drawn with regards to cases involving stolen vehicles is further evidenced by the federal courts' application of the inference in cases brought under the National Motor Vehicle Theft Act, or Dyer Act [18 U.S.C. §§ 2311-2313 (1982)]. See 15 A.L.R. Fed. 856 (1973 & Supp. 1983), and cases cited therein. Summarizing the law as applied in those cases, American Law Reports notes the following:

> [U]nexplained possession is deemed guilty possession . . . and this may serve to permit an inference that the possessor, whether or not he is shown to have been the thief, knew that the vehicle was stolen. . . .

Id. at 859. The Tenth Circuit Court of Appeals has held, for example, that

> possession by the defendant of the recently stolen automobile justifies the inference that the possession is guilty possession and may be of controlling weight unless explained by the circumstances or accounted for in some way consistent with innocence. [Seefeldt v. United States, 183 F.2d 713, 715 (10th Cir. 1950)].

McManaman v. United States, 327 F.2d 21, 25 n.3 (10th Cir. 1964). See also Garrison v. United States, 353 F.2d 94, 95 (10th Cir. 1965) (Utah case). The federal courts' application of this inference to cases involving the possession of stolen motor vehicles is logical and supports the conclusion that the inference should apply in cases prosecuted pursuant to similar state laws, such as § 41-1-112.

163, 459 P.2d 763 (1969). And, as recognized by this Court:

> [I]t is a fact of life that one in possession of stolen property who makes no explanation as to how he came in possession is apt to be under some adverse consideration as to his honesty; and if he has an explanation as to how he innocently came into possession of the stolen property, he would certainly improve his situation by giving his account of how it happened to the [trier of fact].

State v. Murphy, Utah, 617 P.2d 399, 405 (1980).

Fourth, appellant was found driving the truck less than two months after it had disappeared from the owner's place of business (T. 4, 6-7, 13-14, 19) and thus was in possession of recently stolen property. See State v. Merritt, 67 Utah at 335-336, 247 P. at 501 (four months was not "of such length as to take the case out of the category of 'property recently stolen'"); United States v. Robertson, 417 F.2d 873, 878 n.2 (5th Cir. 1969) (the shorter the period between the theft and defendant's possession, the stronger the inference of guilt).

Under these circumstances, the trial judge could properly have inferred that appellant knew that the truck he possessed was stolen, and having found that element, concluded beyond a reasonable doubt that appellant had violated § 41-1-112.

When considering a challenge to the sufficiency of the evidence supporting a conviction, this Court has applied